CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 82

FRANK COOK, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED MAY 16, 1932

CERTIORARI GRANTED OCTOBER 10, 1932

(36,771)

(36,771)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

No. 82

FRANK COOK, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

	Original	Print
Proceedings in United States circuit court of appeals, first circuit	1	1
Caption.....(omitted in printing)..	1	
Record from district court of the United States, District of Rhode Island	1	1
Caption.....(omitted in printing)..	1	
Libel of information in admiralty No. 1646	2	1
Same, No. 1647	7	6
Warrant and monition, No. 1646	10	8
Same, No. 1647	12	10
Claim of owner, No. 1646	14	11
Claimant's answer, etc., No. 1646	14	12
Claim, answer, and exceptions, No. 1647	17	14
Minute entry of hearing	19	16
Statement of evidence	19	16
Stipulation	19	16
Testimony of Charles W. Lawson	19	17
Floyd Sexton	40	37
Richard Ross	41	39
Thomas F. Hull	45	43
Harold E. McClure	50	48
Frank D. Cook	51	49

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 22, 1932

	Original	Print
Stipulation as to exhibits	62	61
Motion to release on bond	63	61
Affidavit of Frank Cook in support of motion to release on bond	63	62
Appraisal	63	62
Opinion of court, Letts, J	64	62
Final decree, No. 1646	83	79
Petition for appeal, No. 1646, and order allowing same	84	80
Assignment of errors, No. 1646	85	81
Final decree, No. 1647	85	81
Petition for appeal, No. 1647, and order allowing same	86	82
Assignment of errors, No. 1647	87	83
Extensions of time, etc	88	84
Stipulations for consolidation (allowed)	88	84
Findings of fact, No. 1646	89	85
Conclusions of law, No. 1646	90	86
Libellant's exceptions, No. 1646	91	87
Libellant's bill of exceptions, No. 1646	93	88
Findings of fact, No. 1647	94	90
Conclusions of law, No. 1647	95	91
Libellant's exceptions, No. 1647	95	91
Libellant's bill of exceptions, No. 1647	96	92
Extensions of time, etc	97	93
Citations and returns of service thereof (omitted in printing)	98	
Præcipe, No. 1646	100	93
Præcipe, No. 1647	101	94
Certificate of clerk (omitted in printing)	102	
Argument and submission (omitted in printing)	103	
Opinion, Bingham, J	105	95
Final decree	117	106
Clerk's certificate (omitted in printing)	117	
Order allowing certiorari	118	107

[fols. a-1] [Captions omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT, DISTRICT OF RHODE ISLAND

Admiralty. No. 1646

UNITED STATES OF AMERICA

v.

BRITISH MOTOR SCREW "MAZEL TOV"

Admiralty. No. 1647

UNITED STATES OF AMERICA

v.

400 SACKS AND 6 BOTTLES MORE OR LESS OF DISTILLED SPIRITS EX BRITISH MOTOR SCREW "MAZEL TOV"

The above-entitled actions, as hereinafter appears, by stipulation of counsel and order of court, were consolidated for purposes of appeal, and the joint record is as follows:

LIBEL OF INFORMATION IN ADMIRALTY 1646—Filed November 25, 1930

To the Honorable Ira Lloyd Letts, United States District Judge for the District of Rhode Island, sitting in admiralty:

The libel of the United States of America, by its proctor, Henry M. Boss, Jr., United States Attorney for the District of Rhode Island, against the British Motor Screw "Mazel Tov," her engines, tackle, apparel and furniture and against all persons lawfully intervening for their interests therein, in a cause of condemnation, forfeiture and penalty, civil and maritime, under the Customs and Revenue laws of the United States, on information and belief alleges as follows:

First. That at all times hereinafter mentioned, the libellant was and still is a corporation sovereign.

Second. That at all times hereinafter mentioned the said British Motor Screw "Mazel Tov" was operating under a certificate of British registry issued at Halifax, Nova Scotia October 1, 1929 to Fortune Bay Shipping Company, [fol. 3] Ltd. of Halifax, Nova Scotia, registry changed on May 21, 1930 to the Mazel Tov Shipping Co., Ltd., of Halifax, Nova Scotia.

Third. That at all times hereinafter mentioned Frank Cook of Lunenburg, Nova Scotia, was master of the said British Motor Screw "Mazel Tov."

Fourth. That at all times hereinafter mentioned said British Motor Screw "Mazel Tov" was bound to the United States.

Fifth. That prior to and, to wit, on the first day of November, A. D. 1930, said British — Screw "Mazel Tov" had committed, was committing and was attempting to commit an offense against the laws of the United States prohibiting the importation of alcoholic beverages by conveying said alcoholic liquors to the United States by itself and by a vessel or vessels other than the "Mazel Tov," its speed and the speed of such other vessel or vessels being such that it and they could and did reach the coast of the United States by traversing the distance from the "Mazel Tov" to the coast within one hour.

Sixth. That heretofere, to wit, on the 1st day of November, A. D. 1930 on the navigable waters of the United States, to wit, about 9⅞ miles from No Man's Land in the State of Massachusetts and within a Collection District of the United States Customs Service, T. J. Sexton, Lt. Commander in command of the United States Coast Guard Destroyer Tucker, duly authorized in the premises, seized said British Motor Screw "Mazel Tov" and thereafter turned over said vessel to the Collector of Customs at the Port of Providence in said District and within the Admiralty and maritime jurisdiction of this Honorable Court.

Seventh. That before the filing of this libel, said Collector of Customs of the Port of Providence adopted said seizure made as aforesaid and now holds said British Motor Screw "Mazel Tov" at said Providence in said District and within the admiralty and maritime jurisdiction of this Hon-[fol. 4] orable Court as forfeited to the United States for

the penalties imposed by Sections 584 and 585 of the Tariff Act of 1930.

Causes for Penalty

First Cause for Penalty

(Sec. 584 of the Tariff Act of 1930)

Eighth. Your libellant repeats and realleges as part of this cause for penalty, civil and maritime, each and every allegation contained in the articles heretofore numbered, "First," "Second," "Third," "Fourth," "Fifth," "Sixth" and "Seventh," hereinbefore set forth.

Ninth. That heretefore, to wit, on the 1st day of November A. D. 1930, on the navigable waters of the United States, to wit, about 9⅞ miles from No Man's Land in the State of Massachusetts and within a Collection District of the United States Customs Service, said Frank Cook, who was then and there master of said British Motor Screw "Mazel Tov," which was then and there bound to the United States, failed to produce the manifest of the cargo of said vessel upon the demand of an officer of the law, to wit, T. J. Sexton, Lt. Commander in command of the United States Coast Guard Destroyer Tucker, duly authorized to make such demand, contrary to the form of the statute and of the treaty between the United States and Great Britain, in such case made and provided.

Tenth. That by reason of the foregoing and by virtue of the provisions of Section 584, Title IV of the Tariff Act of 1930, the said Frank Cook became liable to a penalty of $500, which penalty was assessed against said master by said Collector of Customs for the payment of which said penalty said British Motor Screw "Mazel Tov" then and there became subject to seizure and summary proceedings by libel to recover the same.

Eleventh. That all and singular the premises are true and [fol. 5] within the civil and maritime jurisdiction of the United States of America and of this Honorable Court.

Second Cause for Penalty

(Sec. 584 of the Tariff Act of 1930)

Twelfth. Your libellant repeats and realleges as part of this cause for penalty, civil and maritime, each and every

allegation contained in the articles heretofore numbered, "First", "Second", "Third", "Fourth", "Fifth", "Sixth" and "Seventh", hereinbefore set forth.

Thirteenth. That heretofore, to wit, on or about the 1st day of November, A. D. 1930, about 9-7/8 miles from No Man's Land, Massachusetts, in Collection District No. 4 of the United States Customs Service, there was found on board said British Motor Screw "Mazel Tov", merchandise, to wit, 403 sacks and 6 loose bottles of distilled spirits of great value, to wit, of the value of $14,286.18, not included or described in any manifest of the cargo of said British Motor Screw "Mazel Tov", contrary to the form of the statute in such case made and provided, which said merchandise was delivered to the Collector of the Fifth Collection District in the Port of Providence, within the jurisdiction of this Honorable Court.

Fourteenth. That by reason of the foregoing and by virtue of the provisions of Section 584 of Title IV of the Tariff Act of 1930, the said Frank Cook became liable to a penalty equal to the value of said merchandise, found as aforesaid, to wit, a penalty of $14,286.18, which penalty was assessed against said master by said Collector of Customs, for the payment of which said penalty said British Motor Screw "Mazel Tov" then and there became subject to seizure and summary proceedings by libel to recover the same.

Fifteenth. That all and singular the premises are true and within the civil and maritime jurisdiction of the United States of America and of the Honorable Court.

[fol. 6] Third Cause for Penalty

(Sec. 585 of the Tariff Act of 1930)

Sixteenth. Your libellant repeats and realleges as part of this cause for penalty, civil and maritime, each and every allegation contained in the articles heretofore numbered "First", "Second", "Third", "Fourth", "Fifth", "Sixth" and "Seventh", hereinbefore set forth.

Seventeenth. That heretofore, to wit, on or about the 1st day of November A. D. 1930, the said British Motor Screw

"Mazel Tov" arrived from a foreign port or place, to your libellant unknown, within the limits of Collection District No. 4, to wit, at a place about 9-7/8 miles from No Man's Land, Massachusetts, and thereafter, to wit, on or about the 1st day of November, A. D. 1930, attempted to depart from said Collection District, having then and there unladen merchandise from said vessel without making a report or entry under the provisions of the Tariff Act of 1930, not by reason of stress of weather or other necessity contrary to the form of the statute in such case made and provided.

Eighteenth. That by reason of the foregoing and by virtue of the provisions of Section 585 of Title IV of the Tariff Act of 1930, said Frank Cook became liable to a penalty of $5,000, which penalty was assessed against said master by said Collector of Customs, for the payment of said penalty said British Motor Screw "Mazel Tov" then and there became subject to seizure and summary proceedings by libel to recover the same.

Nineteenth. That all and singular the premises are true and within the civil and maritime jurisdiction of the United States of America and of this Honorable Court.

Wherefore your libellant prays that due process of law may be awarded against the British Motor Screw "Mazel Tov", her engines, tackle, apparel and furniture and that [fol. 7] due notice be given all persons concerned to appear on the return day of said process, to show cause, if any they have, why said vessel should not be condemned, forfeited and sold for the causes aforesaid and the proceeds of said sale be distributed according to law and such other distribution be had thereof as well for the penalties aforesaid as for the causes of forfeiture and such other disposition thereof be made as the Court shall direct.

Henry M. Boss, Jr., United States Attorney.

Duly sworn to by Henry M. Boss, Jr. Jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

LIBEL OF INFORMATION IN ADMIRALTY 1647—Filed November 25, 1930

To the Honorable Ira Lloyd Letts, United States District Judge for the District of Rhode Island:

The libel of information of the United States of America, by its proctor, Henry M. Boss, Jr., United States Attorney for the District of Rhode Island, in a cause of forfeiture, civil and maritime, for breach of the provisions of the Tariff Act of 1930, upon information and belief alleges:

First. That at all times hereinafter mentioned, libellant was and still is a sovereign power.

Second. That at all times hereinafter mentioned the said British Motor Screw "Mazel Tov" was operating under a [fol. 8] certificate of British registry issued at Halifax, Nova Scotia, October 1, 1929 to Fortune Bay Shipping Company, Ltd., of Halifax, Nova Scotia, registry changed on May 21, 1930 to the Mazel Tov Shipping Co., Ltd., of Halifax, Nova Scotia.

Third. That prior to, and to wit, on the 1st day of November, 1930, said British Motor Screw "Mazel Tov" was bound to the United States with a cargo of distilled spirits which was consigned to the master of the vessel, with the seals broken, and had committed, was committing and was attempting to commit an offense against the laws of the United States prohibiting the importation of alcoholic beverages by conveying said alcoholic beverages to the United States, said vessel by itself and by a vessel or vessels other than the "Mazel Tov", its speed and the speed of such other vessel or vessels being such that it and they could and did reach the coast of the United States by traversing the distance from the "'Mazel Tov" to the coast within one hour.

Fourth. That heretofore, to wit, on the 1st day of November, 1930, on the navigable waters of the United States, to wit, about 9⅞ miles from No Man's Land, Massachusetts, and within Collection District No. 4 of the United States Customs Service, Lt. Commander T. J. Sexton, in

command of the United States Coast Guard Destroyer Tucker, duly authorized in the premises, went on board the said British Motor Screw "Mazel Tov", seized said 403 sacks and 6 bottles more or less of distilled spirits and thereafterwards turned over the said 403 sacks and 6 bottles more or less of distilled spirits to the Collector of Customs of the Fifth Collection District at the Port of Providence, in said District and within the admiralty and maritime jurisdiction of this Honorable Court.

Fifth. That before the filing of this libel, the Collector of Customs of the Fifth Collection District at the Port of Providence adopted said seizure made as aforesaid and now holds said 403 sacks and 6 bottles more or less of distilled spirits at said Providence in said District and within [fol. 9] the admiralty and maritime jurisdiction of this Honorable Court as forfeited to the United States for violation of the provisions of Section 584 of the Tariff Act of 1930.

[fol. 9] Cause for Penalty and Forfeiture

(Sec. 584 of the Tariff Act of 1930)

Sixth. Your libellant repeats and realleges as part of this cause for penalty and forfeiture, civil and maritime, each and every allegation contained in the articles hereof numbered "First", "Second", "Third", "Fourth" and "Fifth".

Seventh. That heretofore, to wit, on or about the 1st day of November, 1930, about 9⅞ miles from No Man's Land, Massachusetts, in Collection District No. 4 of the United States Customs Service there was found on board said British Motor Screw "Mazel Tov" merchandise, to wit, 403 sacks and 6 bottles more or less of distilled spirits of great value, to wit, of the value of $14,286.18, not included or described in the manifest of the cargo of said British Motor Screw "Mazel Tov", contrary to the form of the statute in such case made and provided, which said merchandise was delivered to and is now held by the Collector of the 5th Collection District at the Port of Providence, within the admiralty and maritime jurisdiction of this Honorable Court.

Eighth. That Frank Cook of Lunenburg, Nova Scotia was at the time of said seizure and now is master of the said British Motor Screw "Mazel Tov".

Ninth. That by reason of the foregoing and by virtue of the provisions of Section 584, Title IV of the Tariff Act of 1930, the said Frank Cook became liable to a penalty equal to the value of said merchandise found as aforesaid, constituting a penalty of $14,286.18, which penalty was assessed against said master by said Collector of Customs for the payment of which said penalty the said merchandise then and there became subject to seizure and forfeiture and summary proceedings by libel to recover the said penalty.

[fol. 10] Tenth. That all and singular the premises are true and within the civil and maritime jurisdiction of the United States of America and of this Honorable Court.

Wherefore your libellant prays that due process of law may be awarded against said 403 sacks and 6 bottles more or less of distilled spirits and that due notice be given all persons concerned why said condemnation and forfeiture should not be decreed or such other disposition be made as this Honorable Court shall direct.

Henry M. Boss, Jr., United States Attorney.

Duly sworn to by Henry M. Boss, Jr. Jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

WARRANT AND MONITION ON LIBEL IN ADMIRALTY 1646—Issued November 25, 1930, with Marshal's Return Thereon

DISTRICT COURT OF THE UNITED STATES, DISTRICT OF RHODE ISLAND

The President of the United States of America to the Marshal for the District of Rhode Island or to his Deputy, Greeting:

Whereas, a libel hath been filed in the District Court of the United States for the District of Rhode Island, on the

twenty-fifth day of November, A. D. 1930, by the United States of America, by its proctor, Henry M. Boss, Jr., [fol. 11] United States Attorney for the District of Rhode Island against the British Motor Screw Mazel Tov, etc. in a cause of condemnation, forfeiture and penalty, civil and maritime, under the customs and revenue laws of the United States for the reasons and causes in said libel mentioned, and praying the usual process and monition of the said court, in that behalf to be made, and that all persons interested in the said British Motor Screw Mazel Tov, etc., may be cited in general and special to answer the premises, and all proceedings being had, that the said British Motor Screw Tov, etc. may, for the causes in said libel mentioned, be condemned and forfeited as prayed in said libel.

You are therefore commanded to attach said British Motor Screw Mazel Tov, etc. and to detain the same in your custody until further order of court and to give due notice to all persons claiming the same or having anything to say why the same should not be condemned and forfeited pursuant to the prayer of said libel, that they appear before said court to be held at Providence, in and for said district, on the second day of December, A. D. 1930, at 10 o'clock a. m., then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return hereof, together with this writ.

Witness the Honorable Ira Lloyd Letts, Judge of said court, at Providence, this twenty-fifth day of November, A. D. 1930.

Alice Peckham, Clerk. (Seal.)

Marshal's Return

At Pawtuxet, R. I., November 25, 1930.

In obedience to the within monition, I seized the within-named British Motor Screw Mazel Tov and have given due notice to all persons claiming the same, by advertising the substance of this monition in the Providence Journal, No- [fol. 12] vember 26, 1930 and the Evening Bulletin, November 28, 1930, and by posting a notice of seizure on the said

boat and on the bulletin board of the United States District Court.

Howard C. Arnold, United States Marshal, by Waldo D. Rouviere, Deputy.

Service, $2; travel, .30; copy and posting, $1.30; advertising, $1.

IN UNITED STATES DISTRICT COURT

WARRANT AND MONITION ON LIBEL IN ADMIRALTY 1647—ISSUED NOVEMBER 25, 1930, WITH MARSHAL'S RETURN THEREON

DISTRICT COURT OF THE UNITED STATES, DISTRICT OF RHODE ISLAND

The President of the United States of America to the Marshal for the District of Rhode Island or to his Deputy, Greeting:

Whereas, a libel hath been filed in the District Court of the United States for the District of Rhode Island, on the twenty-fifth day of November, A. D. 1930, by the United States of America, by its proctor, Henry M. Boss, Jr., United States Attorney for the District of Rhode Island, against 403 sacks and 6 bottles, more or less, of distilled spirits ex British Motor Screw Mazel Tov in a cause of forfeiture, civil and maritime, for breach of the provisions of the Tariff Act of 1930 for the reasons and causes in said libel mentioned, and praying the usual process and monition of the said court, in that behalf to be made, and that all persons interested in the said 403 sacks and 6 bottles, more or less, of distilled spirits ex British Motor Screw Mazel Tov may be cited in general and special to answer the premises, and all proceedings being had, that the said 403 sacks and 6 bottles, more or less, of distilled spirits ex British Motor Screw Mazel Tov may, for the causes in said libel mentioned, be condemned and forfeited as prayed in said libel.

You are therefore commanded to attach said 403 sacks [fol. 13] and 6 bottles, more or less, of distilled spirits ex British Motor Screw Mazel Tov and to detain the same

in your custody until further order of court and to give due notice to all persons claiming the same or having anything to say why the same should not be condemned and forfeited pursuant to the prayer of said libel, that they appear before said court to be held at Providence, in and for said District, on the second day of December, A. D. 1930, at 10 o'clock a. m., then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the Honorable Ira Lloyd Letts, Judge of said court, at Providence, this twenty-fifth day of November, A. D. 1930.

Alice Peckham, Clerk. (Seal.)

Marshal's Return

At Providence, R. I., November 25, 1930.

In obedience to the within monition, I seized the within named 403 sacks and 6 bottles of distilled spirits, more or less, ex British Motor Screw Mazel Tov and have given due notice to all persons claiming the same, by advertising the substance of this monition in the Providence Journal, November 26, 1930, and Evening Bulletin, November 28, 1930, and by posting a notice of seizure on the bulletin board of the United States District Court.

Howard C. Arnold, United States Marshal, by Waldo D. Rouviere, Deputy.

Service, $2; travel, 06; copy and posting, $1.30; advertising, $1.

[fol. 14] In United States District Court

Claim of Owner, Admiralty No. 1646—Filed January 7, 1930

Now comes Frank Cook of Lunenburg, Nova Scotia, master and bailee of the British Motor Screw Mazel Tov, registered to the Mazel Tov Shipping Co., Ltd., of Halifax, Nova Scotia, and protesting that the seizure of the above-named vessel by the United States of America was in violation of

the laws and statutes of the United States of America, and without waiving any of his rights which he may have under the laws of the United States of America, being compelled to make the admission herein for the purpose of recovering his property so seized as aforesaid, claims that the Mazel Tov Shipping Co., Ltd., of Halifax, Nova Scotia, is the true and lawful owner of the said vessel, her engines, tackle, apparel, and furniture, as the same seized at the instance of the United States of America, and prays that it may be permitted to appear in that certain libel filed against said vessel and to defend the same, and further representing that it is desirous of having said vessel released on bond, prays that this court grant it an order to release said vessel, her engines, tackle, apparel and furniture, upon giving proper bond in accordance with Revised Statutes, Section 938 (Title 28, Section 751, U. S. C. A.).

Frank Cook.

IN UNITED STATES DISTRICT COURT

CLAIMANT'S ANSWER AND AMENDMENT THERETO AND EXCEPTIONS IN ADMIRALTY 1646—Filed December 2, 1930

To the Honorable the District Judge of and for the District Court of the United States in and for the District of Rhode Island:

Frank Cook of Lunenburg, Nova Scotia, master and claimant of the British Motorship Mazel Tov, her engines, tackle, apparel, and furniture, as the same are proceeded against by the libel of the United States of America in a [fol. 15] cause of forfeiture, admiralty and maritime, answers and excepts to said libel:

First. The claimant admits the allegations in the first article of said libel.

Second. The claimant admits the allegations in the second article of said libel.

Third. The claimant admits the allegations in the third article of said libel.

Fourth. The claimant denies the allegations in the fourth article of said libel.

Fifth. The claimant denies the allegations in the fifth article of said libel.

Sixth. The claimant denies the allegations in the sixth article of said libel.

Seventh. The claimant denies the allegations in the seventh article of said libel.

Eighth. As to the eighth article of the libel the claimant answers each and every allegations as answered in articles First, Second, Third, Fourth, Fifth, Sixth and Seventh, as hereinbefore set forth.

Ninth. The claimant denies the allegations in the ninth article of said libel.

Tenth. The claimant denies the allegations in the tenth article of said libel.

Eleventh. The claimant denies the allegations in the eleventh article of said libel.

Twelfth. As to the twelfth article of the libel the claimant answers each and every allegation as answered in articles First, Second, Third, Fourth, Fifth, Sixth and Seventh, as hereinbefore set forth.

Thirteenth. The claimant denies the allegations in the thirteenth article of said libel.

Fourteenth. The claimant denies the allegations in the fourteenth article of said libel.

[fol. 16] Fifteenth. The claimant denies the allegations in the fifteenth article of said libel.

Sixteenth. As to the sixteenth article of the libel the claimant answers each and every allegation as answered in articles First, Second, Third, Fourth, Fifth, Sixth and Seventh, as hereinbefore set forth.

Seventeenth. The claimant denies the allegations in the seventeenth article of said libel.

Eighteenth. The claimant denies the allegations in the eighteenth article of said libel.

Nineteenth. The claimant denies the allegations in the nineteenth article of said libel.

Twentieth. The exception of Frank Cook, claimant of the British Motorship Mazel Tov in the above-entitled cause respectfully shows that said vessel was not seized within the territorial limits of any jurisdiction of the United States, but, on the contrary, was captured and boarded at a point more than four (4) leagues from the coast of the United States, and was not seized on any of the waters of the United States or within any collection district of the United States as alleged in said libel, and it was not the intention at any time to enter any of the territorial limits of the United States and that therefore this court has no juristion sitting in admiralty in this matter.

Wherefore the claimant prays that said libel may be dismissed and that said claimant may recover his costs.

Frank Cook.

Duly sworn to by Frank Cook. Jurat omitted in printing.

[fol. 17] Amended

Frank Cook, master and claimant of the British Motorship Mazel Tov, on oath deposes and says that he is the lawful bailee of the aforesaid vessel for its owner, the Mazel Tov Shipping Co., Ltd., of Halifax, Nova Scotia, that he has read the foregoing answer and exceptions and that the same are true to the best of his knowledge and belief.

Frank Cook.

Sworn to this fourth day of December, A. D. 1930.
Joseph E. Fitzpatrick, Notary Public.

In United States District Court

Claim, Answer, and Exceptions in Admiralty No. 1647—Filed December 2, 1930

To the Honorable the District Judge of and for the District Court of the United States in and for the District of Rhode Island:

Frank Cook of Lunenburg, Nova Scotia, consignee and claimant of a certain cargo of assorted intoxicating liquors on board the British Motor Screw Mazel Tov, as the same are proceeded against by the libel of the United States of America in a cause of forfeiture, admiralty and maritime, answers and excepts to said libel;

First. The claimant admits the allegations in the first article of said libel.

Second. The claimant admits the allegations in the second article of said libel.

Third. The claimant denies the allegations in the third article of said libel.

Fourth. The claimant denies the allegations in the fourth article of said libel.

Fifth. The claimant denies the allegations in the fifth article of said libel.

[fol. 18] Sixth. As to the sixth article of the libel the claimant answers each and every allegation as answered in articles First, Second, Third, Fourth and Fifth, as hereinbefore set forth.

Seventh. The claimant denies the allegations in the seventh article of said libel.

Eighth. The claimant admits the allegations in the eighth article of said libel.

Ninth. The claimant denies the allegations in the ninth article of said libel.

Tenth. The claimant denies the allegations in the tenth article of said libel.

Eleventh. The exception of Frank Cook, claimant of the aforementioned sacks of assorted intoxicating distilled spirits ex British Motor Screw Mazel Tov in the above entitled cause respectfully shows that said cargo was not seized within the territorial limits of any jurisdiction of the United States, but on the contrary was captured and boarded at a point more than four (4) leagues from the coast of the United States, and was not seized on any of the waters of the United States or within any collection district

of the United States as alleged in said libel, and that it was not the intention at any time to land or bring any of the aforesaid cargo into any of the territorial limits of the United States, and that therefore this court has no jurisdiction sitting in admiralty in this matter.

Wherefore the claimant prays that said libel may be dismissed and that said claimant may recover his costs.

Frank Cook.

Duly sworn to by Frank Cook. Jurat omitted in printing.

[fol. 19] In United States District Court

Minute Entry of Hearing

On the same date, to wit, the second day of December, 1930, the return day of the Warrant and Monition in each case, the cases were duly called in open court, and no other person responding to said call other than the claimant already of record, orders of default were entered as to all persons other than Frank Cook of Lunenburg, Nova Scotia, master and bailee of the British Motor Screw Mazel Tov.

Thereafter, to wit, on the fourth day of December, 1930, the action numbered Admiralty 1646 was consolidated for hearing within Admiralty No. 1647, fully heard upon claimant's oral motion to dismiss the libel, and decision thereupon was reserved.

In United States District Court

Statement of Evidence

Stipulation

It is hereby stipulated and agreed that the transcript of testimony in the above-entitled case shall consist of the entire record with the exception of the omissions indicated therein.

Charles H. Eden, Assistant United States Attorney.
Joseph E. Fitzpatrick, Proctor for Claimant.

CHARLES W. LAWSON (Sworn)

By Mr. Boss:

Q. 1. What is your official position?

A. Executive officer, on the Tucker.

Q. 2. Of the United States destroyer Tucker?

A. United States destroyer Tucker.

Q. 3. And you are registered as lieutenant?

A. Lieutenant.

[fol. 20] Q. 4. Yes, and were you aboard the Tucker on November 1, 1930?

A. I was.

Q. 5. At that time did you sight the British ship Mazel Tov?

A. We sighted a vessel which later proved to be the Mazel Tov; yes, sir.

Q. 6. And where were you when you sighted her?

A. You mean the position of the vessel?

Q. 7. Yes—first, in what water was the Tucker?

A. We were cruising in an area to the southeastward of No Man's Land, Massachusetts.

Q. 8. And at what hour, approximately?

A. She was first sighted about five minutes of six.

Q. 9. On November 1?

A. November 1, 1930.

Q. 10. Is that morning or afternoon?

A. At night.

Q. 11. Yes, and what was the position of the Tucker?

A. I shall have to refer to the log, to be exact.

The Court: Do you need more than an approximate position for that?

Mr. Boss: Yes; I will amend the question.

Q. 12. What was the exact position of the Tucker at the time you first sighted the Mazel Tov?

A. Forty-one degrees, 9 minutes, 35 seconds north latitude, 70 degrees, 37 minutes, 15 seconds west longitude.

Q. 13. And did you at any time take the position of the Mazel Tov?

A. She was approximately half a mile, 140 true from us —bearing.

Q. 14. Astern?

A. No, sir; on our port bow.

Q. 15. Can you state your exact position in nautical miles from land?

A. When we first sighted them?

Q. 16. Yes.

A. May I have a piece of paper? Nine and seven-eighths miles.

Q. 17. That is the Tucker was 9⅞ miles from the nearest point of the coast of the United States?

A. Yes, sir, when we first sighted her.

[fol. 21] Q. 18. And that land was what land?

A. No Man's Land, Massachusetts.

Q. 19. At that time the Mazel Tov was half a mile—approximately half a mile away?

A. Yes, sir. We were headed south 180 true and she bore 140 from us, true.

Q. 20. Now, in what direction was she headed?

A. She was headed toward us, which would bring her headed approximately northwest. We ran—she was headed approximately 320 degrees true, roughly north—northwest magnetic, which would head her for Gay Head, Massachusetts.

Q. 21. Do you know whether she was under way or not?

A. No, sir, she was in the path of the moon, headed toward us and as she turned you could see her whole outline and then diminishing as she stood to the southerly. I couldn't state whether she was under way at the time or not.

Q. 22. Did you approach her?

A. Yes, sir; she was without lights so we changed our course to investigate her. We ran for approximately three or four minutes and she began to get underway and headed to the southward, so we halted a little bit to keep her in the path of the moon as she was without lights, so we could keep her in sight.

Q. 23. Did you chase her?

A. We chased her and we were alongside of her about three minutes after six. I can refer to the log and give you the exact time. "At 6.3 along side small boat turned on and shifted right and found it to be the British Motor vessel 'Mazel Tov' of Halifax, Nova Scotia. Signaled small boat to stop by use of whistle. 6.5 drifting along side 'Mazel Tov.'"

Q. 24. Did you or anyone to your knowledge take the position of the Mazel Tov when she was first sighted—the exact position?

A. We couldn't determine the exact position, we weren't there to determine its exact position, but it was approximately half a mile. Visibility was fair, but at night you can't see a great distance and she was just on the edge of the path of the moon and it is only—well it couldn't have [fol. 22] been over half a mile on account of visibility at the time, maybe a half to three-quarters; it couldn't be over three-quarters at the time. Slightly over half a mile away from us at the time. We determined the position of her when she was first sighted by our own known position at the time and we of course steered from there to meet her.

Q. 25. And did you determine that position in that way?

A. We determined the position.

Q. 26. And what was that?

A. When she was first sighted?

Q. 27. Yes.

A. That was her position when she was first sighted that I gave you before—the Tucker's position—did I give the Tucker's position?

Mr. Fitzpatrick: Yes.

A. That was near it. I will have to step off the stand—I can give you the exact position at the time we sighted the position of the Mazel Tov. The position I gave before was the position of the Mazel Tov at the time. Change that to the position of the Mazel Tov when first sighted by the Tucker.

Mr. Fitzpatrick: That was 41 degrees, 9 minutes, 35 seconds; that was the Mazel Tov, not the Tucker?

The Witness: Yes, the position of the Mazel Tov when first sighted.

Q. 28. Now, what was the position of the Tucker when you first sighted the Mazel Tov?

A. Have you a pair of dividers? 41 degrees, 10 minutes, north latitude, 70 degrees, 37 minutes, 45 seconds west longitude.

Q. 29. Now, did you signal to stop her when she was about to be overhauled?

A. Yes, sir.

Q. 30. What was the signal?

A. We were close aboard her on her port quarter. We used the megaphone first to hail her. The master sung out: "I do not understand you; I cannot hear you." So we then blew the whistle, whereupon she stopped.

Q. 31. And did you take her position then?

A. We took the time that we stopped.

[fol. 23] Q. 32. What was that?

A. At 6.05 we were drifting alongside of her; then we measured her time and position—the time ran—the time run, and speed we were making measured our position then on the chart.

Q. 33. And what was that?

A. That was 41 degrees, 8 minutes and 47 seconds—46 seconds—45 seconds, the halo of 45——

[Stenographer reporting for defense: "Well which is it?"]

A. Make it 45 seconds north, 70 degrees, 36 minutes, 30 seconds, west longitude. The other was north latitude.

Q. 34. That is the position of the Mazel Tov?

A. When she was overhauled and we stopped alongside of her.

Q. 35. And did you figure how far she was from the nearest point of the coast line?

A. 10⅞ miles.

Mr. Fitzpatrick: 10⅞ miles?

The Witness: 10⅞ miles.

Q. 36. And that was what land?

A. No Man's Land, Massachusetts.

Mr. Fitzpatrick: That is the Mazel Tov?

The Witness: The Mazel Tov, her position when we stopped alongside of her.

Q. 37. And the time was?

A. 6.05.

Q. 38. 6.05; and how long did you stay beside her, or how long were you attempting to board her?

A. We spotted her position, and by the time we got aboard of her it was sometime later—around twenty-five minutes, I think—[reading from log: "6.40 p. m. boarding party on board Mazel Tov."]

Q. 39. And during that time the engines of both ships were stopped—the engines were stopped?

A. Yes.

Q. 40. And you were both drifting?

A. We were both drifting; yes, sir.

Q. 41. How was the wind?

A. The wind was northwest by north, which is a speed of thirteen statute miles per hour; velocity of thirteen miles per hour.

[fol. 24] Q. 42. And what was your drift due to the wind?

A. That was earlier here, at 6 o'clock, north northwest.

Q. 43. What is the change you are making?

A. It was north northwest at 6 o'clock.

Q. 44. The wind?

A. Yes; north northwest at six o'clock.

Q. 45. What was your drift, due to the wind?

A. Approximately——

Mr. Fitzpatrick: Just a minute. I object to that question in that form.

Mr. Boss: It may become material.

The Court: Is this after the coast guard had boarded the vessel Mazel Tov?

Mr. Boss: Yes.

The Court: Does that make any difference?

Mr. Boss: As I say, after—it is during the time they were drifting——

Q. 46. How long before you got under way?

The Court: The point you want to bring out is, they didn't drift outside the boundary.

Mr. Boss: I want to show what the drift was and when it was, in anticipation of the defense here, as set up by the answer.

A. We laid——

The Court: I will sustain the objection unless you can show me where it has some bearing. The question is where they boarded the boat. Where they drifted to after, I don't see as it makes any difference.

Mr. Boss: It doesn't under the status of the testimony at present. We will see if it does and then I will renew the question.

Q. 47. Did you go on board the Mazel Tov—were you a boarding officer?

A. Yes, sir, I was a boarding officer.

Q. 48. And what cargo did you find?

A. I went on board the Mazel Tov and asked for her registry, manifest, clearance papers and crew list.

[fol. 25] Q. 49. Were those furnished?

A. They were furnished and produced, and I read them over; and I looked on her manifest to see how much cargo and what cargo she had on board.

Mr. Fitzpatrick: She had a manifest?

The Witness: She had a manifest.

Q. 50. I show you this document. Is this the manifest that the master produced?

A. Yes, sir, this is the manifest produced.

Mr. Boss: I ask that this be introduced in evidence as Libellant's Exhibit 1.

The Clerk: Marked "United States 1."

Q. 51. Did you examine the cargo to see if it complied with the manifest?

A. According to the manifest there is no amount of cargo shown; it is merely "one lot". I asked the master if I could look in his hatches. He immediately pulled off a tarpoon on the front hatch and lifted the hatch covers.

Q. 52. Was the hatch filled before he did that?

A. The hatch was not filled.

Q. 53. What cargo did you find?

A. I looked down the hatch and found many burlap sacks marked "William Penn". I made an estimate—I tried to make an estimate of the amount contained in there, and the master said: "I have the rest of the liqueur aft."

Mr. Fitzpatrick: "I have the rest of the liquor aft"?

The Witness: Yes, "I have the rest of the liqueur aft"—he prouounced it "liqueur".

Mr. Fitzpatrick: French.

Q. 54. What did you—strike that out. Did you find any other alleged manifest on board?

A. While searching——

Mr. Fitzpatrick: Just a minute.

Q. 55. Yes or no?

A. Yes, sir.

Q. 56. I show you a document marked "Manifest"; did you find that on board?

A. Yes, sir.

[fol. 26] Q. 57. And is that sealed?

Mr. Fitzpatrick: Just a minute. I object.

The Court: What is the question?

Mr. Boss: "Is that manifest sealed?"

Mr. Fitzpatrick: It isn't sealed and it isn't a manifest.

The Court: It shouldn't be sealed.

Mr. Boss: I offer this in evidence.

The Court: It was found on board the boat, that is the testimony?

Mr. Fitzpatrick: I object to the term "manifest".

The Court: It may be offered as a document found on board the boat.

The Clerk: United States Exhibit 2.

Mr. Boss: Libellant's Exhibit 2.

The Court: Have you the other one?

The Clerk: No; Mr. Boss has Exhibit 1.

Q. 58. I show you a document marked "Agreement or Articles and Account of Crew"; is that document one that you received from the master at that time?

A. Yes, sir.

Mr. Boss: I ask that this be marked—I offer this in evidence and ask that it be marked "Libellant's Exhibit 3."

Mr. Fitzpatrick: I object. There is no right shown here as yet for the coast guard officer to take anything from that boat.

The Court: That may be admitted.

Mr. Fitzpatrick: Exception.

[Libellee's exception noted.]

Q. 59. I show you a clearance document——

The Court: These documents are only admitted, Mr. Fitzpatrick, de bene, for such light as they will throw.

Q. 60. Did you receive that clearance document from the master at that time?

A. Yes, sir.

Mr. Boss: I offer this in evidence as Libellant's Exhibit No. 4.

[It is so marked.]

[fol. 27] Q. 61. I show you the document called "Certificate of British Registry"; is that a document you received from the master when you boarded the Mazel Tov?

A. Yes, sir.

Mr. Boss: I offer this in evidence as Libellant's Exhibit No. 5.

[It is so marked.]

Q. 62. Did you take the "Work book of sights" off the Mazel Tov?

A. No, sir, I did not take it. The deputy inspector at Boston took them off. I saw them on board the ship.

Q. 63. You saw the "Work book of sights" on board the Mazel Tov?

A. Yes.

[No questions 64 to 69.]

Q. 70. Did you have any conversation with the master as to the speed of the Mazel Tov?

A. He was on board the Tucker being questioned by the deputy inspector—what is his name?

Q. 71. Kahler?

A. No. Kearns.

Q. 72. Kearns.

Mr. Fitzpatrick: Who else was there?

The Witness: Kahler, Lieutenant Commander Sexton, Ensign Ross and myself.

Q. 73. Did he state what the speed of the Mazel Tov was?

A. He stated that she was—could make eleven knots.

Mr. Fitzpatrick: What is that?

The Witness: He stated that she could make eleven knots.

Q. 74. Mr. Lawson, assuming the weather conditions to have been as stated by you when you sighted the Mazel Tov and assuming that the Mazel Tov could travel eleven knots

an hour, in your opinion could she reach—could she have reached the coast of the United States within——

Mr. Fitzpatrick: Just a minute.

Q. 75. —one hour, from her position?

Mr. Fitzpatrick: I object to that "when you first sighted her"—I object.

[fol. 28] The Court: On what ground?

Mr. Fitzpatrick: The position the boat was in when he first sighted her at best was a guess. If he wants to ask from the position the Mazel Tov was in when he was alongside, I don't object.

Mr. Boss: I may ask both questions, but I want to ask this one first.

Mr. Fitzpatrick: I object to that one.

The Court: He may answer.

A. I believe she could from the first one.

Mr. Fitzpatrick: You what?

The Witness: I believe she could from the first one—I will check it.

The Court: The witness has already testified where he first saw them and the point also where they boarded her, now what has he to figure? It is a question of the witness' opinion, if the speed of the vessel were eleven knots—can't you answer that without figuring?

The Witness: Yes, sir.

The Court: What is the answer?

The Witness: Yes, sir; I just wanted to check myself.

Cross-examination.

By Mr. Fitzpatrick:

X Q. 76. How long have you been in the coast guard, lieutenant?

A. I was appointed a cadet in the United States Academy in 1922.

X Q. 77. That is the Coast Guard Academy at New London?

A. Yes, sir.

X Q. 78. And on the night in question—now, lieutenant, will you take those dividers and locate for me a point about 97/8 miles from No Man's Land?

A. Any point?

X Q. 79. Locate a point 9⅞ miles from No Man's Land.
A. [The witness points to chart.]
X Q. 80. Any place within a circle is 9⅞ miles?
A. Yes.
X Q. 81. It might be a point up in Vineyard Sound; is that correct?
A. Yes, sir.
[fol. 29] X Q. 82. Where did you center that from, from the center of No Man's Land?
A. No; from the edge.
X Q. 83. So it practically makes a circle?
A. Practically.
X Q. 84. And what would the diameter of that circle be?
A. Two times 9⅞.
X Q. 85. Approximately two miles?
A. Approximately.

[No cross-question 86.]

X Q. 87. Who boarded that vessel with you?
A. Ensign Ross.
X Q. 88. Ensign Ross?
A. Yes.
X Q. 89. And how long were you aboard the vessel??
A. Roughly fifteen or twenty minutes.
X Q. 90. And during that time did you talk to Captain Cook?
A. Yes.
X Q. 91. And Captain Cook produced a manifest?
A. He gave me a paper with "Manifest" written at the top.
X Q. 92. It was sealed?
A. Sealed.
X Q. 93. And do you know all the destination was in that manifest?
A. Nassau.
X Q. 94. Nassau, and what else?
A. And the high seas—I am not sure; I think it was written in ink.
X Q. 95. Nassau——

The Court: That speaks for itself.
Mr. Fitzpatrick: Yes, but I want him to see it.

A. I remember seeing it, but I couldn't read it. I believe that means "high seas" [indicating manifest]; I don't know.

X Q. 96. And how long was the Tucker alongside before a boarding party was put on the Mazel Tov?

A. As I said before, roughly thirty or forty minutes.

X Q. 97. Roughly thirty or forty minutes?

A. Yes.

X Q. 98. And who was that in charge of?

A. As I stated before, I was in charge of boarding——

X Q. 99. You were in charge of the boarding party?

A. Yes, sir.

[fol. 30] X Q. 100. And later on another crew went aboard, didn't they, after the seizure?

A. Yes, sir.

X Q. 101. And who was in charge of that crew?

A. Ensign Richard M. Ross.

X Q. 102. And how many more?

A. Roughly eight or ten men.

X Q. 103. Eight or ten men. Where did the crew of the Mazel Tov remain?

A. I do not know, sir; I was not over there at the time. They remained on board the vessel.

X Q. 104. When did you take Captain Cook over to the Tucker?

A. At the Providence harbor.

X Q. 105. Not until you got to the Providence harbor?

A. No, sir.

X Q. 106. Let me see, what day was that?

A. That we were on board?

X Q. 107. What day did you interview Captain Cook in the Providence harbor?

A. November 3d.

X Q. 108. And when did they seize the boat?

A. November 1st.

X Q. 109. And from November 1st to November 3d, up to the time you arrived at Providence, you didn't question Captain Cook?

A. I did not; no sir.

X Q. 110. Or any members of the crew?

A. I did not; no sir.

X Q. 111. Tell us what you were doing all this time from November 1st to November 3d.

A. We got under way around 8.30 or 8.40 the night of November 1st. We proceeded at a slow speed in the direction of No Man's Land.

X Q. 112. How slow?

A. Five—six knots.

X Q. 113. Six knots? A. Roughly six knots.

X Q. 114. Yes——

A. In the direction of No Man's Land gas buoy. We then laid a course from there to the northern point of Block Island.

X Q. 115. Yes; when did you arrive there?

A. While we were proceeding on this course——

[fol. 31] X Q. 116. When did you arrive there?

A. In Block Island?

X Q. 117. Yes.

A. The morning—around noon of the next day, the 2d.

X Q. 118. Sunday?

A. November 2d.

X Q. 119. Sunday?

A. Yes the 1st was Saturday—the next day.

X Q. 120. And what did you do after that?

A. We proceeded to Providence.

X Q. 121. And what time did you arrive in Providence?

A. I can tell you exactly—we arrived here that night—that afternoon at 3.58, we stopped and anchored in thirty feet of water in Providence harbor.

X Q. 122. That is Sunday?

A. Sunday noon.

X Q. 123. So from 6.05 the time of the seizure to 3.30 Sunday afternoon you had this boat in tow?

A. Yes, sir.

X Q. 123. Did you request Captain Cook at the time of seizure to get under way himself?

A. I asked if he would; yes, sir.

X Q. 125. What did he say?

A. He said no, he would not get under way.

X Q. 126. So you put a line on?

A. We put a line on.

X Q. 127. You ordered a line on and started to tow?

A. Yes, sir.

X Q. 128. On November 3d you say you and others had a conversation with Captain Cook; tell us what that conversation was.

A. I cannot tell it verbatim.

X Q. 129. Give us your best recollection of it?

A. I didn't conduct the questioning.

X Q. 130. Who did conduct the questioning?

A. Deputy Inspector Kearns.

X Q. 131. Kearns?

A. Yes.

X Q. 132. The customs man?

A. Yes, sir.

X Q. 133. But you were there all the time?

A. I was around there; yes, sir; listening in at times.

X Q. 134. How many times did the inspector ask Cook [fol. 32] how fast the Mazel Tow traveled?

A. To the best of my recollection he asked him how much speed she would make and Captain Cook replied nine or ten knots.

X Q. 135. Nine or ten knots?

A. Yes.

X Q. 136. Not eleven?

A. Just one moment, please. He then asked him: "She can make eleven knots?" And Captain Cook said: "Yes." He then asked Captain Cook if she could make twelve knots, and the captain said: "No, she has never made twelve, according to my log."

X Q. 137. But first he said she could make eight or nine knots?

Mr. Boss: He didn't say that.

X Q. 138. Or nine or ten knots?

A. Nine or ten knots.

X Q. 139. And when the deputy inspector asked the captain how many knots that boat could go, did he specify under what conditions?

A. No, sir, he did not.

X Q. 140. When he asked Captain Cook if that boat could go a certain number of knots, did he specify the conditions that existed at the time of the seizure by the Tucker on November 1st?

A. No, sir.

X Q. 141. Did your deputy inspector ask Captain Cook how fast the boat could go if there was a—if a strong offshore wind was blowing?

A. No, sir.

X Q. 142. Did he ask Captain Cook how fast that boat could go running against the tide?

A. No, sir.

X Q. 143. And now, lieutenant, what time did it get dark on the night of November 1st?

A. Around 5.30.

X Q. 144. Around 5.30?

A. Five o'clock.

X Q. 145. And what time did you see the Mazel Tov?

A. I first saw her at five minutes of six.

X Q. 146. Were you on the bridge?

A. Yes, sir.

X Q. 147. How high is that bridge, by the way, from the water line?

A. Thirty-two feet.

X Q. 148. Thirty-two feet. Can you tell how high the bridge of the Mazel Tov was approximately?

[fol. 33] A. There were two places of measuring on her that you might call the bridge.

X Q. 149. Well, take the highest point of the boat, how did it compare with the Tucker?

A. About fifteen feet.

X Q. 150. About fifteen feet?

A. Yes.

X Q. 151. And you were thirty-two?

A. Yes.

X Q. 152. Do you know where Gay Head light is?

A. Yes.

X Q. 153. And when you stopped the Mazel Tov did you take bearings?

A. I did not; no, sir.

X Q. 154. Did you have any conversation with Captain Cook relative to the light at Gay Head?

A. Yes, sir.

X Q. 155. What did he tell you?

A. He said he couldn't see it.

X Q. 156. Did you go on his bridge to see if you could see it?

A. I did not.

X Q. 157. You could see it from your bridge?

A. We could see it very, very plain.

X Q. 158. Because you were thirty-two feet up?

A. Yes, sir.

X Q. 159. How far is it from the point of seizure to Gay Head light, nineteen miles?

A. Sixteen miles.

X Q. 160. Sixteen miles?

A. Yes, sir.

X Q. 161. And who did take the bearings from Gay Head light on your boat?

A. I believe the commanding officer did.

X Q. 162. Commander Sexton?

A. Yes, sir.

X Q. 163. You don't know what time he took those bearings?

A. No, sir, I do not.

X Q. 164. Outside of Gay Head light were any other lights visible?

A. Not as I recall.

X Q. 165. So that the only light visible upon which a person could take bearings at the time of seizure was Gay Head light?

A. Yes, sir.

X Q. 166. And Captain Cook said he couldn't see it?

A. He said he could not.

[fol. 34] X Q. 167. You didn't go up to see if you could?

A. No, I didn't go up; I sent someone up.

X Q. 168. Who did you send?

A. Mr. Ross.

X Q. 169. You said Mr. Ross was in charge of the detail aboard the Mazel Tov at the time it was being towed?

A. Yes, sir.

X Q. 170. Did you see a log line on that boat, the Mazel Tov?

A. I did not; no, sir. I understood they had one out.

X Q. 171. You understood they had one out?

A. Yes, sir.

X Q. 172. Did you take any soundings?

A. The commanding officer did, I didn't.

X Q. 173. Were you there?

A. No, sir; I was on the boarding party.

X Q. 174. And do you know what the distance was from the Tucker to the Mazel Tov at the time the lieutenant commander was taking these soundings?

A. Approximately half a mile.

X Q. 175. Now lieutenant, half a mile nearer the shore or out from the shore?

A. Out from the shore.

X Q. 176. And on the port or starboard side?

A. Of what?

X Q. 177. Of the Mazel Tov.

A. On the port side.

X Q. 178. On the port side. Wasn't there more conversation you had with Captain Cook when you first boarded that boat than you have already told us?

A. In regard to what, sir.

X Q. 179. Isn't it a fact Captain Cook said, after you started your conversation, that he wasn't within the twelve mile limit?

A. He said he believed he wasn't inside the twelve mile limit.

X Q. 180. Did you say to Captain Cook, "I think you are; I think you are eleven and a half miles"?

A. I do not recall that exactly.

X Q. 181. And did you say to Captain Cook, "Well, according to our reckoning you are about eleven and a half miles"?

A. I do not recall that.

[fol. 35] X Q. 182. You wouldn't say whether you did or didn't?

A. No, sir.

X Q. 183. Captain Cook said he didn't believe he was in the twelve mile limit?

A. Yes, sir.

X Q. 184. Are you sure he said that, or that he wasn't within the twelve mile limit?

A. I don't recall whether he made a positive declaration or whether he assumed that he was not.

X Q. 185. Now, were you the first one on board the Tucker who saw the Mazel Tov?

A. No, sir; the first class quartermaster saw her.

X Q. 186. He was on watch?

A. Yes, sir.

X Q. 187. Is he here?

A. No, sir.

X Q. 188. And it was called to your attention?

A. Yes, sir.

X Q. 189. Now you are quite positive that the Mazel Tov was running without lights?

A. Yes, sir.

X Q. 190. You are positive of that?

A. There were no lights visible.

X Q. 191. Well if the Mazel Tov was turning or you were turning stern to, could you see the Mazel Tov's lights?

A. I don't understand your question.

X Q. 192. Suppose the Mazel Tov was running in this direction [indicating] and the Tucker was in back of it, could you see the kind of lights they have on the Mazel Tov if she was stern to you?

A. Normally yes; I have seen them on her before.

X Q. 193. Speaking of lights, did you have any lights on?

A. We did not have lights on.

X Q. 194. And you came alongside of this boat and put your search light on?

A. Yes, sir.

X Q. 195. Were you running the search light?

A. No, sir,

X Q. 196. How long after you put your search light on the boat did you hail her?

A. Immediately.

X Q. 197. As soon as you put your search light on?

[fol. 36] A. As soon as we could make out the name on her stern; yes, sir.

X Q. 198. How far off were you when you could make out the name?

A. We were close aboard her at that time.

X Q. 199. And the first time you knew what boat it was, was when you got up there?

A. Yes, sir; the first time we knew was when we got up there.

X Q. 200. At any time, lieutenant, did you see, on the day of the seizure, any small boats making contact with the Mazel Tov?

A. No, sir.

X Q. 201. At any time on the day of the seizure did you see the Mazel Tov within the three mile limit of the United States?

A. No, sir.

X Q. 202. At any time on the day of the seizure did you see the Mazel Tov unload any cargo?

A. No, sir.

X Q. 203. At any time on the day of the seizure did you see the Mazel Tov within any port of the United States?

A. Any port?

X Q. 204. Yes, sir.

A. No, sir.

X Q. 205. But did you see a manifest, in French?

A. A document marked "Manifest" which did not have the amount of the cargo she had on board.

X Q. 206. With a diversified cargo of merchandise; is that correct?

A. "One lot", I believe.

X Q. 207. One lot of diversified merchandise; is that correct? [Indicating manifest.]

A. If I translate that correctly, it is.

X Q. 208. When you first sighted the Mazel Tov you testified to Mr. Boss that you couldn't tell the exact position of the Mazel Tov, you guessed it was about half mile; is that correct?

A. Yes, sir.

X Q. 209. How did you arrive at that conclusion?

A. Regarding the limit of visibility.

X Q. 210. The visibility of what?

A. The limit of visibility.

[fol. 37] X Q. 211. The limit of visibility was about half a mile, was it, that night?

A. Roughly half to three-quarters of a mile, as I stated before.

X Q. 212. Oh, did you ever see the log line of the Mazel Tov at a point about half a mile southeast of No Man's gas buoy?

A. I saw the log which showed that she was taking the beam of No Man's gas buoy, which is southwest.

X Q. 213. Southwest—about how far off to No Man's?

A. I don't know, sir.

X Q. 214. Tell us, will you, how far that gas buoy is off No Man's Land—two miles I think.

A. Less than two and a quarter miles.

X Q. 215. Less than two and a quarter miles, and you saw the log line at that time?

A. No, I did not see the log until it was produced in—showed to me by Captain Cook when we got up into Providence harbor.

X Q. 216. And what did it read?

A. It read a "scant 13.2 miles."

X Q. 217. It read a "scant 13.2 miles"; do you know when that log was thrown down?

A. No, sir.

X Q. 218. Or you don't know when it was picked up?

A. No, sir.

X Q. 219. But when you saw it it was 13.02 scant?

A. No; 13.2 scant.

X Q. 220. Then assume that a log line was thrown over at the time you started to tow the Mazel Tov and that that log line was picked up at a point about half a mile from the gas buoy off No Man's Land and the log read 13.2, what would that mean to you?

A. That it was the distance covered by the Mazel Tov minus any correction she may have had in her log line from the time the log was first thrown overboard until it was read.

X Q. 221. Now, lieutenant, you are familiar with log lines?

A. Yes, I am.

X Q. 222. Isn't a fact that when a vessel is being towed or [fol. 38] when a vessel is under way at a speed of four or five knots, that the log will not register as accurately as it would if the boat or vessel was going at a greater rate of speed?

A. I have never found that to be the case; no, sir; only at high speeds.

X Q. 223. Only at very high speeds; isn't it a fact, lieutenant, that the condition of the sea has some effect on a long line?

A. Practically none whatever.

X Q. 224. By the way, when you were towing the Mazel Tov in how was the sea?

A. The sea had picked up.

X Q. 225. Quite choppy?

A. Quite choppy; the wind had increased.

X Q. 226. Was the wind still blowing off-shore?

A. Yes, sir.

X Q. 227. Do you know how the tide was then?

A. It is hard to state the tide on account of the wind around No Man's Land.

X Q. 228. Well, is it pretty generally a good supposition to make, if there is a strong off-shore wind and the sea is choppy, that the tide is running in against the wind?

A. No, sir, not at that point.

X Q. 229. Not at that point?

A. No, sir.

X Q. 230. Not at any of those points at which you towed? A. Not until we got to No Man's gas buoy.

X Q. 231. How was it at No Man's gas buoy?

A. It would run northeast and southwest in there.

X Q. 232. If I remember, lieutenant, you did not take any soundings at all?

A. I did not; no, sir.

Mr. Fitzpatrick: That is all.

Redirect examination.

By Mr. Boss:

Q. 233. Mr. Lawson, do you know whether the port holes of the Mazel Tov were closed or blocked in any way?

Mr. Fitzpatrick: Just a minute; I object to that. What has that got to do with it?

[fol. 39] The Court: I don't know about what half this testimony so far has to do with it.

Mr. Boss: There has been some cross-examination about whether the boat was dark or not, and particularly what point of land the master of the Mazel Tov could see or couldn't see. Now if the port holes were clogged, he couldn't see any point of land, perhaps.

Mr. Fitzpatrick: They weren't running a blind ship.

The Court: I don't see what the port holes have to do with visibility.

Mr. Boss: I was going to follow it up with other parts of the ship.

The Court: Let's not spend too much time on it.

Q. 234. Any portion of the ship, did you observe, that was blocked or in any way screened so the light couldn't get out?

A. Yes, sir.

Q. 235. What portions?

A. The deck house; the sides and stern of the deck house were battened down with wooden doors.

Q. 236. You have been referring during the progress of your testimony to a chart. Are the pencil markings on this chart yours?

A. Some of them are; yes, sir.

Q. 237. And this is the chart that you have used in referring to the positions of the two ships?

A. Yes, sir.

Mr. Boss: I offer this in evidence—it may aid the defendant——

Mr. Fitzpatrick: I object.

Mr. Boss: —as Libellant's Exhibit 6.

Mr. Fitzpatrick: I object on the ground of lack of proof.

The Court: Is it an official United States map?

Mr. Fitzpatrick: I object to the markings on it. I don't object to the chart itself, but he says only some of the markings are his.

The Court: When he finishes his testimony he can indicate the marks that are his marks, so that if we want to read [fol. 40] his testimony we will understand them. I don't want to take the time now, however.

FLOYD J. SEXTON (sworn)

By Mr. Boss:

Q. 1. Were you in command of the Tucker on November 1, 1930?

A. Yes, sir.

Q. 2. And what was your designation?

A. Lieutenant Commander Floyd J. Sexton.

Q. 3. Who determined the positions of the Tucker and the Mazel Tov, the positions having been testified to by Mr. Lawson?

A. Mr. Lawson and the navigator determined the positions, which were checked by me.

Q. 4. And were they checked on this chart that we have just offered in evidence?

A. Yes, sir.

Q. 5. They were. Referring to this chart, have you any addition to make to Mr. Lawson's testimony?

A. In regards to what, sir?

Q. 6. Anything. Did he state the positions correctly, as checked by you?

A. Yes, sir.

Q. 7. Did you go on board the Mazel Tov?

A. I did not.

Q. 8. Did the master make any objection to having your men board her?

A. No, sir.

Q. 9. Did you turn over the cargo to the collector of customs in the port of Providence?

A. Yes, sir, I did.

Q. 10. And that cargo consisted of what?

A. Approximately two hundred cases of intoxicating liquor.

Q. 11. And you delivered the boat, the Mazel Tov herself, to the collector?

A. Yes, sir, I did.

Q. 12. Had you trailed the Mazel Tov before November 1st?

A. Yes, sir.

Cross-examination.

By Mr. Fitzpatrick:

X Q. 13. Did you speak to the Mazel Tov commander that night when you drew alongside?

A. Yes, sir, I did.

X Q. 14. Through a megaphone?

A. Yes, sir.

[fol. 41] X Q. 15. You had a conversation with the man you now know as Captain Cook?

A. Yes, sir.

X Q. 16. Tell us what that conversation was, please.

A. Well, there was quite a bit of it——

X Q. 17. Especially the conversation relative to the position of the boat.

A. I told him that according to my reckoning he was inside the twelve mile limit.

X Q. 18. And you told him the distance, didn't you?

A. I don't recall.

X Q. 19. Didn't you tell him eleven and a half miles, according to your reckoning?

A. Yes, I think I did say it was.

X Q. 20. What did he say it was, do you recall?

A. Well, he said he didn't think he was inside.

X Q. 21. Did he say he didn't think or that he wasn't inside the twelve mile limit, commander?

A. Well, I wouldn't say which he said.

X Q. 22. But you did tell him he was eleven and a half miles off-shore?

A. Yes, about.

Mr. Fitzpatrick: All right. That is all.

ENSIGN RICHARD ROSS (sworn).

By Mr. Boss:

Q. 1. Did—what is your position?

A. Watch officer.

Q. 2. On board the Tucker?

A. Yes, sir.

Q. 3. And you were watch officer on board the Tucker on November 1st?

A. I was.

Q. 4. Did Captain Cook ask you to read the taffrail meter log?

A. Yes, sir.

Q. 5. And did he show you the reading before you started from a position where she was seized?

A. After she started.

Q. 6. After you started?

A. Yes.

Q. 7. And what was it then?

A. Zero.

Q. 8. Zero, and what was it when you came to No Man's Land?

A. When we were abeam of No Man's Land gas buoy, or when we were by the beam, I was watching the compass to [fol. 42] see when we got abeam and when we got abeam we went back and read it again and I read 13.1—a little bit over that.

Q. 9. Did that indicate you had gone a fraction over thirteen miles in that time?

A. Yes, sir.

Q. 10. Between the two positions?

A. Yes, sir.

Q. 11. And how do you account for that? Aren't you—do you know when the Mazel Tov was boarded what her distance was from land?

A. No, sir; I didn't check it.

Q. 12. You didn't check it?

A. No, sir.

Q. 13. You have heard it said here, have you not, what it was?

A. Yes, sir.

Q. 14. And how do you account for the difference? Mr. Ross, what experience have you had in the reading taffrail meter logs?

A. I made two European cruises and took watches as quartermaster and read the log every hour at certain times during these cruises. That is actual experience, and——

[No question numbered 15.]

Q. 16. You know, of course, when a vessel is drifting and when she isn't of course?

A. Yes, sir.

Q. 17. And can you compute the drift?

A. The drift of a vessel?

Q. 18. Yes.

A. Yes, sir. I would say that during the time, from the time we were along side the Mazel Tov until we got under tow, that we drifted off-shore and southeast approximately two miles or more and that that 13.1 approximately, a little over, was due to the distance we covered on the—from the time we took her in tow till we were by the beam—of course that is counting any correction that might be in the log.

Q. 19. So that that doesn't mean that the Mazel Tov was more than thirteen miles from shore at the time you made the seizure?

A. No, sir.

[fol. 43] Cross-examination.

By Mr. Fitzpatrick:

X Q. 20. How far is it from the gas buoy to No Man's Land?

A. From the gas buoy to No Man's Land?

X Q. 21. Yes, sir.

A. Less than two and a quarter miles.

X Q. 22. Less than two and a quarter miles; so that from the point the Mazel Tov was towed by the Tucker to abeam of the gas buoy was 13.1 according to the log—correct?

A. From where we took her in tow until we were abeam of the gas buoy.

X Q. 23. Was 13.1 or 2?

A. 13.1—between 1 and 2.

X Q. 24. Between 1 and 2, and now the distance from where the log line was taken up abeam the gas buoy you say to No Man's Land is how far?

A. From where the log line was taken up to No Man's Land.

X Q. 25. Two and a half miles?

A. Yes, sir.

X Q. 26. Making a total of what?

A. Oh, you can't add it up that way.

X Q. 27. I am asking what that totals?

A. If you add 13.1 and 2½, that would be 15.3.

X Q. 28. And the shore of No Man's Land was the near-east point of land, wasn't it, from the place of seizure?

A. I don't know; the commanding officer attends to that; we don't have anything to do with it.

X Q. 29. Of course the gas buoy isn't land, is it?

A. No.

Redirect examination.

By Mr. Boss:

Q. 30. Mr. Fitzpatrick has asked you about the distance from the point when you were abeam the gas buoy to the gas buoy and you said it was two and a half miles?

A. From No Man's Land to the gas buoy.

Q. 31. From No Man's Land to the gas buoy?

A. Yes, sir.

Q. 32. And the distance from the point where you made the seizure to No Man's Land would compare how, with the distance from the point where you made the seizure to the [fol. 44] point abeam of No Man's Land—the gas buoy?

A. Well——

Q. 33. You have a triangle there, haven't you?

A. We have a triangle—I can show you on the chart there.

Q. 34. Well, would you add that two and a half miles to the distance?

A. No, you wouldn't.

Q. 35. From the point of seizure to the gas buoy?

A. No, sir.

Q. 36. No.

The Court: I am trying to figure out how the gas buoy comes in. They have logged the distance from the point of seizure to the gas buoy.

Mr. Boss: Yes.

The Court: What was the purpose of going to the gas buoy if that wasn't in the direction of land?

Mr. Boss: It was. My point is the distance is the same from the point of seizure to the gas buoy as it is to land. That is, the triangle is such that the two long legs are the same.

Q. 37. Would you say they were the same, Mr. Witness?

A. Yes, sir.

Recross-examination.

By Mr. Fitzpatrick:

X Q. 38. Do you know what course the Tucker chartered from the point of seizure?

A. What course?

X Q. 39. Yes.

A. No, sir. What course she steered from the point of seizure in?

X Q. 40. Yes.

A. No, sir, I don't.

X Q. 41. You don't know if it was 297 degrees?

A. I know it approximately, but I don't know the exact.

X Q. 42. What was it approximately?

A. All I had to go by was the compass on the Mazel Tov and I don't know what the air is in it—it was approximately around northwest.

X Q. 43. Northwest, north.

A. I wouldn't say.

[fol. 45] X Q. 44. How long have you been in the coast guard, lieutenant?

A. Four years.

X Q. 45. And before you were in the coast guard, did you have any experience on vessels of any kind?

A. No, sir.

X Q. 46. So your total experience on the water is four years?

A. Well, I have been in the coast guard four years.

X Q. 47. That is your experience on navigating vessels?

A. Yes, sir.

X Q. 48. Or reading log lines?

A. Yes, sir.

X Q. 49. And in the coast guard do you read the log?

A. Do I read the log?

X Q. 50. The only time you ever read a log was on your two trips to Europe?

A. No, sir; I have read it other times than that.

THOMAS F. HULL (Sworn).

By Mr. Boss:

Q. 1. Mr. Hull, you are Deputy Collector of Internal Revenue—of Customs?

A. Assistant collector, Mr. Boss.

Q. 2. In the port of Providence?

A. Correct.

Q. 3. And did you handle the matter of the adoption—of the seizure of the Mazel Tov?

A. I didn't understand the question.

Q. 4. Did you handle the matter of adoption and seizure of the Mazel Tov in your office?

A. Yes, I did.

Q. 5. And you did adopt the seizure—you took the vessel in your custody?

A. Yes.

Q. 6. And you took the cargo?

A. I did.

Q. 7. And of what did the cargo consist?

A. The cargo consisted of 403 sacks and six loose bottles of foreign intoxicating liquors.

Q. 8. Did you appraise the vessel?
A. Yes, sir.
Q. 9. What is the valuation?
A. $32,000.
Q. 10. And did you appraise the liquors?
A. Yes, sir.
Q. 11. What is their value?
A. $14,286.18. * * *
[fol. 46] Q. 12. I show you report of seizure—I think I won't introduce that. Did you take samples of the liquors?
A. Yes, sir.
Q. 13. And are these samples which you took from that cargo?
A. They are.
Q. 14. To whom did you hand these samples for analysis?
A. I handed them in to Mr. Morawski's office, but he wasn't there.
Q. 15. And Mr. McLean of his office was there?
A. No; another gentleman was there, I don't know his name. He is usually there in that office.
Q. 16. Did you make any assessment of penalties against the Mazel Tov?
A. Yes, sir.
Q. 17. Have you a copy of that?
A. Yes; right here.
Q. 18. Will you read it?
A. —

November 18, 1930.

Frank Cook, master of British motorship Mazel-Tov, % Joseph E. Fitzpatrick, attorney, 317 Hospital Trust Bldg., Providence, R. I.

SIR: You are hereby notified that the above-named vessel has become liable to a penalty for violation of an Act of Congress as follows:
Tariff Act of 1930, Sec. 584, Falsity of Manifest, $14,286.18, also for violation of an Act of Congress as follows:
Tariff Act of 1930, Sec. 584, Lack of Manifest,"——

The Court: How could you have a falsity of manifest and lack of manifest?

Mr. Boss: I explained that, or attempted to, so far as the allegation of no manifest is concerned we were following the ruling of Judge Morton in The Irene C, when he said if

a manifest didn't have all the legal requirements, it was a nullity and no manifest, and that is the reason for that particular item.

[fol. 47] The Court: Doesn't the logic of it bother you any?

Mr. Boss: I don't care much about it, because the other cause is good.

A. Shall I continue?

Q. 19. Yes.

A. —

—"also Tariff Act of 1930, Sec. 585, Attempting to Depart before Report of Entry, $5000.00.

These violations occurred November 1, 1930 at, to wit, 6:05 p. m. in latitude 41° 68′ 45″ N and longitude 70° 36′ 36″ W, within a collection district of the United States, said vessel having thereafter been arrested by Customs and Coast Guard officers and brought to the Port of Providence.

Respectfully, Emery J. San Souci, Collector of Customs."

Q. 20. Did you send that postpaid to Captain Cook?

A. Yes, sir.

Q. 21. By mail?

A. By mail; yes, sir.

Q. 22. And have the penalties which were assessed by your office been paid?

A. They have not. * * *

Cross-examination.

By Mr. Fitzpatrick:

X Q. 23. Heading that letter is there anything in there about an assessment of damages or penalties? Does it say in there, under the various sections of the Tariff Act, "You are hereby assessed so much money in penalties"?

A. The amounts are stated against each section.

X Q. 24. Is says "You are hereby notified that the above named vessel has become liable to penalty for acts of as follows"—isn't that what it says?

A. Yes.

X Q. 25. It doesn't say anything about assessing any damages?

A. It is a notification that they are liable to those penalties.

X Q. 26. It is a notification there is liable to be penalties —it doesn't assess any penalties?

A. I think it does.

[fol. 48] X Q. 27. How do you know, or can you tell us how the figure of $14,286.18 was arrived at?

A. Yes, sir.

X Q. 28. And can you tell us what it was arrived at for?

A. I didn't understand that.

X Q. 29. [Question repeated by the stenographer as follows: And can you tell us what it was arrived at for?]

A. We have to appraise the value of merchandise in order to find the amount assessed—to be assessed, and the penalty for a false manifest is the appraised value of the merchandise found——

X Q. 30. And did you appraise that?

A. Yes, sir.

X Q. 31. What basis did you use for appraising that?

A. I appraised it all at the foreign market value, as near as I could get it, by the number of cases aboard, and added to it the custom duties and internal revenue.

X Q. 32. You don't know what the cargo consisted of, do you?

A. Yes.

X Q. 33. You do?

A. Yes.

X Q. 34. Every kind of liquor that was on it?

A. Yes, sir.

X Q. 35. All right; what were they?

A. Two hundred and forty-three sacks William Penn American Rye Whiskey containing 24 16-ounce bottles to the sack; that figures 729 gallons at $18 a case foreign value, shows a foreign value of $4,374 for that lot. Add to that the duty of $6.10, including the customs duty and internal revenue on 729 gallons, brings the total to a domestic value on that lot to $8,820.90.

X Q. 36. Just a minute; in other words you are putting a duty on contraband?

A. Yes, sir.

X Q. 37. All right; go ahead.

A. One hundred and six sacks William Penn American Rye Whiskey, twelve 32-ounce bottles to a sack, equals 318

gallons at $18 a case, brings the foreign value to $1,908; at $6.10 duties and internal revenue on 318 gallons makes that amount $3,847.80.

X Q. 38. Yes?

A. The next lot——

X Q. 39. Just a minute; now that is a duty for importa-
[fol. 49] tion of foreign merchandise at $6.10 a gallon?

A. That would be the duty on it if it was brought in for other than beverage purposes.

X Q. 40. How do you know that is foreign merchandise?

A. Well, we have seen a good deal of it from foreign countries; we know it by having seen it before.

X Q. 41. What basis have you, or what basis has the collector, if you know, for assessing any penalties for a falsity on a manifest?

A. [No answer.]

X Q. 42. According to what law? American law?

A. The Tariff Act, 1930; I haven't the exact section.

X Q. 43. Are you familiar with the manifest that is necessary for a ship sailing from St. Pierre to Nassau or the high seas?

A. No.

X Q. 44. Can you tell us what the boundaries of this collection district are?

A. Fortunately.

X Q. 45. All right; what are they?

A. The whole State of Rhode Island and three miles off shore.

X Q. 46. The whole State of Rhode Island and three miles off shore?

A. Yes.

X Q. 46a. That is all. Oh, can you tell us what collection district number 4 is—Massachusetts, isn't it? Is Massachusetts number 4 or 5?

A. Massachusetts is number 4.

X Q. 47. Can you tell us what the collection limits of that district are?

A. I am not so sure, but I think it is the whole State of Massachusetts and the coast line.

X Q. 48. And the coast line?

A. Yes.

Redirect examination.

By Mr. Boss:

Q. 49. Do you know, Mr. Hull, whether the customs collection district includes the margin of water to a distance of four leagues from the coast?

A. I think, or I understand, that a vessel bound to the United States with a cargo, with intent to unlay, is within the jurisdiction within four leagues—with intent to unlade.

The Court: I am afraid some of these questions on both [fol. 50] sides are rather unfair. After all, I shall have to say what the collection duty boundary is.

Mr. Boss: I think, perhaps, I ought to have these marked for identification, especially as we are going to have a recess.

The Court: Have you any objection to those being introduced?

Mr. Fitzpatrick: In evidence?

The Court: Yes.

Mr. Fitzpatrick: Yes, sir.

Mr. Boss: I ask that bottle, labeled "23,161", and contents be marked for identification.

The Court: Both of those were in the custody of your men?

Mr. Boss: Yes, and bottle marked "23,162" and contents be marked for identification.

The Clerk: Marked "United States 7" and "8".

Mr. Boss: Both bottles having been identified by Mr. Hull in his testimony.

The Court: I think we will recess now until two o'clock.

[Noon recess.]

HAROLD E. MCCURE (Sworn)

By Mr. Boss:

Q. 1. What is your position, Mr. McClure?

A. I am assistant chemist in the Industrial Alcohol Division.

Q. 2. Did you receive from the—did your office receive from the Deputy Collector, Hull, certain samples—bottled samples of liquid?

A. Yes, sir, we received two bottles.

Q. 3. I show you bottle labeled—label number 23,161, being United States Exhibit number 7 for identification; did you receive that sample from him? A. This sample was received from the laboratory office.

Q. 4. And did you analyze it and make a chemical analysis of the contents?

A. Yes, sir.

Q. 5. When you received it was it—were the seals unbroken?

A. Yes, sir, the original company seals were unbroken.

[fol. 51] Q. 6. And referring to this particular sample——

Mr. Fitzpatrick: I will admit all of that.

Q. 7. What was the alcoholic volume of this sample?

A. The alcoholic volume was 43.75 percent.

Q. 8. And what was it?

A. It was a distilled spirit, artificially colored, Scotch whiskey flavor.

Q. 9. Now, referring to the sample number 23,162, United States Exhibit 8 for identification, what was the alcoholic volume in the contents of that?

A. This sample was 50.65 alcohol by volume.

Q. 10. And what did it prove to be?

A. It was distilled spirits—whiskey.

Defense

FRANK D. COOK (Sworn)

By Mr. Fitzpatrick:

Q. 1. What is your full name?

A. Frank Donald Cook.

Q. 2. And where do you live, Mr. Cook?

A. Lunenberg, Nova Scotia.

Q. 3. And how old are you?

A. Thirty.

Q. 4. On November 1, 1930, what was your business?

A. Seaman.

Q. 5. An- on what boat?

A. The Mazel Tov.

Q. 6. And what were your duties on the Mazel Tov?

A. Master.

Q. 7. And how long had you been master of the Mazel Tov?

A. About three months.

Q. 8. And for whom did you work?

A. The Mazel Tov Shipping Company.

Q. 9. And how long have you followed the sea?

A. About fifteen or sixteen years.

Q. 10. Have you been master of any other boat besides the Mazel Tov?

A. Yes.

[fol. 52] Q. 11. How long have you been master of boats?

A. I was master on the schooner Nebraska for five years.

Q. 12. What schooner?

A. Nebraska.

Q. 13. The Nebraska. Now, how many members of the crew was there on the Mazel Tov November 1, 1930?

A. Eight besides myself.

Q. 14. Eight besides yourself. You are familiar with charts?

A. Yes.

Q. 15. You can find your location?

A. Yes.

Q. 16.Who was the mate on the Mazel Tov?

A. Augustus Richards.

Q. 17. Augustus Richards. On the evening of November 1st at approximately 6 o'clock will you find your position and give it in latitude and longitude—you can open it all out?

A. Approximately?

Q. 18. Approximately. What does your letter show?

A. There are so many marks here it is all mixed up. I had a mark and I lost it.

Q. 19. Is it around in here?

A. Latitude 41.06.30 north, longitude 70.34.30.

Q. 20. Now, did you take any soundings?

A. I did.

Q. 21. That night?

A. Yes.

Q. 22. When did you take soundings?

A. When the coast guard was alongside of us, and before that.

Q. 23. While the coast guard was alongside of you what did your soundings show?

A. Twenty-one and a half fathoms.

Q. 24. Twenty-one and a half fathoms; did you have any conversation with any coast guard man relative to soundings?

A. I did.

Q. 25. What did they say relative to soundings—who was it?

A. Lieutenant Lawson, I believe.

Q. 26. What was that?

A. He said they had 20 fathoms of water and I said we had more than that.

Q. 27. Who said——

A. They said they had 20 fathoms and I said we had more than that.

[fol. 53] Q. 28. How much more did you have?

A. Twenty-one and a half.

Q. 29. At six o'clock, or shortly before six, on the night of November 1st, were you under way?

A. Yes.

Q. 30. Had you been anchored at any time between five and six?

A. No.

Q. 31. Whether or not, at the time the coast guard vessel came alongside and before, you had lights on your vessel?

A. Yes.

Q. 32. What lights did you have on?

A. The usual running lights.

Q. 33. And the coast guard vessel had no lights?

A. No.

Q. 34. Now, tell the court, please, what the conversation was when the coast guard vessel came along beside you.

A. He told me to heave to and stop and we did so, and then I asked him what he wanted and he said he thought we were inside the twelve-mile limit and was going to tow us in to New London.

Q. 35. Yes?

A. He said he was going to stop and look up his position and find his position and if he thought we were inside the

limits he was going to tow us to New London for examination, since we had contraband cargo, of course.

Q. 36. What did you say?

A. I said we were outside the twelve-mile limit.

Q. 37. Now, Lieutenant Commander Sexton, did he say anything to you relative to the distance off shore?

A. I asked him where he thought we were and he said eleven and a half miles from No Man's Land.

Q. 38. You asked him where he thought you were and he said eleven and a half miles from No Man's Land—and from the position that you were in when the coast guard boat was alongside, was it possible from the bridge of your boat to take a bearing on Gay Head light?

A. Not from our boat, because we couldn't see Gay Head light.

[fol. 54] Q. 39. You couldn't see Gay Head light. Whether or not you tried to take a bearing on Gay Head?

A. What is that?

Q. 40. Did you try to get a bearing on Gay Head?

A. I did, I looked for it; I sent some of the men up to see if they could see it to take a bearing.

Q. 41. How long was it after the search light was first put on the Mazel Tov before she hailed you—the Tucker?

A. Oh, perhaps a couple of minutes, I don't know exactly.

Q. 42. A couple of minutes, and when did you first know it was a coast guard boat definitely?

A. When he told me.

Q. 43. When he was alongside?

A. Yes.

Q. 44. Before this boat came alongside, was there anything distinguishing about it to inform you that it was a coast guard boat, by the lights or flag or anything like that?

A. I didn't see any lights except the search light when she came near us. The search light.

Q. 45. Now, after the officer came on board you showed him the manifest?

A. I did.

Q. 46. And showed him where your cargo was?

A. I did.

Q. 47. And when the coast guard boat got up to you, or before the coast guard boat got up to you, were you headed or bound for the United States?

A. No.

Q. 48. Which way were you sailing?

A. Heading west by south.

Q. 49. Heading west by south, when the coast guard boat came along?

A. When I first saw the coast guard.

Q. 50. When you first saw the coast guard, and you had a cargo of liquor aboard that vessel?

A. Yes.

Q. 51. What did you intend to do with it?

A. Intended to get rid of it.

Q. 52. Well, how?

A. Sell it.

Q. 53. To whom?

A. Anybody.

Q. 54. Anybody that would pay the price?

A. Yes.

Q. 55. Where did you intend to sell it?

A. On the high seas.

[fol. 55] Q. 56. Whether or not at any time on November 1st any form of contact boat, as they are commonly called, made contact with your vessel?

A. No.

Q. 57. At any time on November 1st, or any time before that, Mr. Cook, did your vessel, the Mazel Tov, enter any collection district of the United States?

A. No.

Q. 58. How far from the point you allege you were at the time of the seizure was it to No Man's?

A. At the time of seizure—that is, when they came up alongside?

Q. 59. Yes.

A. Thirteen and three-quarters miles, I think it is.

Q. 60. Thirteen and three-quarters miles, and upon what do you base that figure?

A. I determined that position by the—what the log showed us when we were towing into No Man's buoy.

Q. 61. The first time your vessel was ever in the territorial or maritime waters of the United States was when your vessel, the Mazel Tov, was towed in by the coast guard; is that correct?

Mr. Boss: I object to the form of the question.

The Court: Sustained. That calls for a conclusion.

Q. 62. When was the first time your vessel entered the territorial waters of the United States?

Mr. Boss: It doesn't show he knows when he was in territorial waters.

Mr. Fitzpatrick: I think he knows about it.

The Court: Do we need any more than to find out where he was? I don't know of any law that shows the territorial waters of the United States beyond three miles.

Q. 63. At any time, captain, was the Mazel Tov within one hour sailing distance of the coast of the United States?

A. No.

Q. 64. With the cargo such as was on board the Mazel Tov at the time of seizure and under the conditions as existed at that time, six or thereabouts P.M., November 1, 1930, what [fol. 56] would be the speed of your—or what distance would the Mazel Tov cover in one hour sailing time?

A. Between nine and ten miles.

Q. 65. Between nine and ten miles. Do you know what your ship's papers show the speed of the Mazel Tov to be?

A. Nine miles, I believe.

Q. 66. Did that boat—or could that boat, the Mazel Tov, under the most favorable conditions make a speed of twelve miles an hour?

A. No.

Q. 67. Would the Mazel Tov make more speed loaded or light?

A. Make more light.

Q. 68. It would make more light, so that on this night of November 1st you would say that the speed of your boat would be between nine and ten miles per hour; is that correct?

A. Yes. I should say so.

Q. 69. Did you at any time unload any of your cargo any place within twelve miles or one hour sailing time of your vessel from the coast of the United States?

A. No.

Q. 70. Did you enter any port of entry in the United States?

A. No.

Q. 71. The seizure was made on November 1st; is that correct?

A. Yes.

Q. 72. And were you arrested?

A. I suppose so, along with the rest.

Q. 73. And your crew.

A. Yes.

Q. 74. And were you brought before an officer of the United States in this building?

A. No.

Q. 75. No, not that day, November 1st, but any time?

A. Yes.

Q. 76. When?

A. November 3d. * * *

Q. 78. While you were under the custody of the coast guard were you questioned by coast guard men and customs men?

A. Yes.

Q. 79. And do you know whether or not any other members of your crew were?

A. Yes, some of them were.

[fol. 57] Q. 80. Some of them were. On the following Monday, on November 3d, you were brought into this building?

A. Yes.

Q. 81. Alone?

A. No; with the whole crew.

Q. 82. The whole crew, and at that time you were charged with conspiracy to import four hundred cases of intoxicating liquor, more or less; is that correct?

A. Yes.

Q. 83. And you entered a plea?

A. Yes.

Q. 84. Of what?

A. Not guilty.

Q. 85. And were released on bond?

A. Yes.

Q. 86. And the cases against you and your crew were finally dismissed; is that correct?

A. Yes.

Q. 87. When did you throw over the log line?

A. At the time we started to tow towards land; I don't know the exact hour.

Q. 88. But at the exact time that they started to tow you?

A. Yes.

Mr. Fitzpatrick: You may inquire.

Cross-examination.

By Mr. Boss:

X Q. 89. You signed as master July 24, 1930?

A. Yes.

X Q. 90. Of the Mazel Tov. You cleared from St. Pierre October 16, 1930?

A. Yes.

X Q. 91. And what cargo did you have on board then?

A. A cargo of liquor.

X Q. 92. How many cases?

A. There was about four hundred cases.

X Q. 93. What is your capacity?

A. The capacity is about fifteen or sixteen hundred.

X Q. 94. And where did you get your cargo?

A. At St. Pierre.

[No cross-question numbered 95.]

X Q. 96. How long were you shipping at your home port?

A. I don't remember exactly how long—a few hours. I don't know exactly the time.

X Q. 97. And you cleared from St. Pierre on this voyage [fol. 58] with only about a quarter of your capacity as a cargo; is that correct?

A. Yes.

X Q. 98. Are you sure about that?

A. Yes.

X Q. 99. Only about a quarter of your cargo?

A. About that.

X Q. 100. Well, how many cases did you have?

A. About four hundred cases.

X Q. 101. And there were four hundred cases on board when you were seized?

A. About that.

X Q. 102. Yes. When did you arrive off the coast of Massachusetts? * * *

X Q. 103. When did you arrive off the coast of Massachusetts?

A. I don't know the exact date.

X Q. 104. Give it to me as near as you can recollect.

A. Perhaps the 22d or 23d; I don't remember the exact date.

X Q. 105. Of October?

A. Yes.

X Q. 106. And what did you do between that date and November 1st?

A. We cruised around and stopped sometimes.

X Q. 107. The destination given in your manifest is Nassau and the high seas?

A. Yes, sir.

X Q. 108. And you and the men were shipped to go to Nassau and the high seas and other points in Canada and in the United States, were you not? * * *

A. I shipped to go to Nassau and the high seas.

X Q. 111. Did you know your shipping articles provided that you might go to the United States?

A. I did not.

X Q. 112. You did not. Didn't you read them before you signed them?

A. I had them read to me; I don't remember that part.

X Q. 113. I show you United States Exhibit number 3; is that your signature on that first page?

A. I suppose it is.

X Q. 114. Well, don't you know?

A. It is.

X Q. 115. It is. Will you read the writing here which states what voyage you shipped for?

[fol. 59] Mr. Fitzpatrick. I object.

X Q. 116. —and see whether that includes the United States.

The Court: Objection overruled.

X Q. 117. You did ship for the United States as well as for other ports or points?

A. I didn't ship with the intention of going to the United States.

X Q. 118. But you knew that you might be required to go there?

A. I did not.

X Q. 119. I show you United States Exhibit number 1; is that the manifest that you produced for the boarding officers?

A. Yes.

X Q. 120. And did you have any schedule or list on board the Mazel Tov showing of what your cargo consisted?

A. I did not.

X Q. 121. Were the hatches filled?

—. ——.

X Q. 122. Were they filled?

A. No.

X Q. 123. You did not make sail or did not steer for Nassau, did you? * * *

A. I steered in the general direction of Nassau.

X Q. 126. But you weren't going to Nassau, were you?

A. Not directly.

X Q. 127. Were you going there after your boat had been emptied?

A. Perhaps so.

X Q. 128. Didn't you have any orders as to where you would go when your boat was emptied? * * *

A. I had no orders.

X Q. 130. How many prior voyages had you made in the Mazel Tov since July 1930 when you shipped as master?

A. I guess two. * * *

X Q. 132. You had been trailed by the United States destroyers a few days prior to November 1st.

A. Yes.

X Q. 133. You were trailed by the Jewett on October 30th?

A. I don't remember the name or the exact date. I am not positive.

[fol. 60] X Q. 134. The Wainwright on October 29th?

A. Perhaps so; I don't remember.

X Q. 135. The Cummings on October 21st?

A. I don't remember—maybe.

X Q. 136. The Shaw on October 21st?

A. I don't know. * * *

X Q. 137. How about the Shaw?

A. I don't remember.

The Court: What difference does it make? Isn't it assumed, when you get out in the open, that destroyers have a right to cruise and other boats too.

X Q. 138. Do you deny, Captain Cook, that any of your cargo was taken off of your boat while you were off the Coast of Massachusetts by contact boats?

A. I do.

X Q. 139. So that you hovered off the coast of Massachusetts from about October 22d to November 1st without disposing of any of your cargo?

Mr. Fitzpatrick: Just a minute. I object to the question.

Mr. Boss: I am testing his story.

The Court: Are you afraid of a special meaning of the word "hover"?

Mr. Fitzpatrick: Yes, that is just what I am afraid of.

The Court: Sustained.

X Q. 140. Did your vessel remain off the coast of Massachusetts from October 22d to November 1st without having any of the cargo taken off?

A. Yes.

X Q. 141. You said you were going to sell your cargo to anybody who wanted to buy it?

A. Yes.

X Q. 142. British or American boats?

A. I didn't ask them their nationality.

X Q. 143. You would sell it to anybody?

A. I didn't care who he is.

X Q. 144. How did you place your position at the time that you were observed by the Tucker—how did you place it?

A. By dead reckoning and observation of the sun in the afternoon and by soundings.

[No cross-question numbered 145.]

[fol. 61] X Q. 146. Have you the piece of paper you used when you put the calipers on the chart?

A. I believe I have. I was going to say, also, by the distance that we were towed in to the No Man's buoy.

X Q. 147. Now the writing on this paper was on here before you came in the court room, wasn't it?

A. Some of it was; I might have marked some on since. * * *

X Q. 149 The figures showing latitude and longitude were on this paper when you came into this courtroom?

A. All except those there.

X Q. 150. The figures "Latitude 41 degrees 5 minutes 15 seconds, and longitude 70 degrees, 34 minutes, 30 seconds" were on that paper when you came in the courtroom?

A. They were.

X Q. 151. Did you state to Commander Sexton—

A. I didn't understand that.

X Q. 152. Did you state to Commander Sexton that you would like to wait until morning to fix your position?

A. Not to fix my position; to prove my position.

X Q. 153. To prove your position, you wanted to wait until morning?

A. Yes.

X Q. 154. Do you know John J. Kahler—do you know who he is?

A. No.

X Q. 155. Do you recognize that man as having seen him before [indicating]?

A. Yes; he looks familiar.

X Q. 156. And were you questioned in his presence on November 3d?

A. Yes.

X Q. 157. And do you know that he took down what you said—do you know that he wrote down what you said?

A. I believe so.

X. Q. 158. And did you say in his presence that the speed of your boat was eleven miles, but ten on the average?

—. ——.

X Q. 159. Did you?

A. I don't recall as I said exactly that; perhaps I did.

[fol. 62] X Q. 160. That is correct, isn't it?

A. What is correct?

X Q. 161. That the speed of the Mazel Tov was eleven miles, but ten on the average?

A. Perhaps the maximum speed may be eleven miles under favorable conditions.

X Q. 162. But you made that statement at that time, didn't you?

A. Perhaps I did; I don't remember exactly.

X Q. 163. You won't deny that you did?

A. I don't like to deny point blank what I said because I might have said it.

Mr. Boss: That is all.

Redirect examination.

By Mr. Fitzpatrick:

Q. 164. You are charged with the violation of certain tariff acts of the United States tariff, and certain penalties have

been assessed against you for a violation that took place in latitude 41 degrees, 68 minutes, 45 seconds north, and longitude 70 degrees, 36 minutes and 30 seconds west. Is there any such place as latitude 41 degrees, 68 minutes and 45 seconds?

A. No.

Q. 165. Any such thing as 68 minutes?

A. No.

Q. 166. The most is 60 on a chart, isn't it?

A. Yes.

Q. 167. Or on a clock, either?

—. —.

This is to certify that the foregoing is a true copy, according to my notes.

Emma M. Cummings, Court Stenographer.

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO EXHIBITS

It is stipulated that United States Exhibits Nos. 1 to 6, inclusive, shall be treated as original exhibits and shall be sent up to the Circuit Court of Appeals for the First Circuit in their original form.

George R. Beane, Joseph E. Fitzpatrick, Proctor for the Claimant, by Mortimer W. Newton.

[fol. 63] IN UNITED STATES DISTRICT COURT

MOTION TO RELEASE ON BOND—Filed in Admiralty 1646, January 7, 1931

Now comes the claimant in the above-entitled cause and moves that the British Motor Screw Mazel Tov, her engines, tackle, apparel and furniture be released on bond.

Frank Cook, by His Attorney, Joseph E. Fitzpatrick.

IN UNITED STATES DISTRICT COURT

AFFIDAVIT IN SUPPORT OF MOTION TO RELEASE ON BOND—Filed January 7, 1931

I, Frank Cook, of Lunenburg, Nova Scotia, on oath depose and say that I am the master, claimant and bailee of the British Motor Screw Mazel Tov, against which libel has been brought by the United States of America, and said vessel is now in the custody of the Collector of Customs.

Frank Cook.

Before me, at Providence, in the County of Providence and State of Rhode Island, this fifth day of January, A. D. 1931, personally appeared Frank Cook, known to me and known by me to be the party signing this affidavit, and he made oath that the statements contained herein are true as of his own knowledge, and statements on information are true to the best of his knowledge and belief.

Joseph E. Fitzpatrick, Notary Public.

IN UNITED STATES DISTRICT COURT

APPRAISAL

Thereafter, on the tenth day of January, three appraisers were appointed by the court, and were duly sworn to appraise the vessel Mazel Tov and her appurtenances, and on the nineteenth day of January, 1931, the report of said appraisers was returned and filed, in the sum of $14,700.

[fol. 64] IN UNITED STATES DISTRICT COURT

OPINION—Filed May 16, 1931

LETTS, J.:

This is a libel in rem brought by the United States against the British Motor Vessel Mazel Tov, after it had been seized and brought into port by officers of the coast guard, to effect the collection of certain penalties claimed to have

been assessed against the master for alleged violations of the Tariff Act of 1930. The libel states three causes for penalty: (1) for failure to produce the manifest of the cargo; (2) for having on board merchandise not described in the manifest and (3) for having arrived within the limits of collection district No. 4 and attempting to depart without making entry. The first two causes are laid as violations of Section 584 and the third as a violation of Section 585. No forfeiture of either cargo or vessel is asked.

I shall not here review the testimony of the various witnesses, but will state the facts as I find them to be. On the evening of November 1, 1930, the Mazel Tov was boarded by officers of the United States destroyer Tucker off the coast of Massachusetts eleven and one-half miles from the nearest point of land. The vessel at the time was under way, but promptly stopped when signaled so to do. Her sole cargo, outside of sea stores, consisted of 403 sacks of whiskey which had been cleared at St. Pierre on October 16. While the cargo was little more than one-fourth the quantity which the vessel could carry, there was no evidence that the Mazel Tov had either been in communication with our shores or had unladen any part of her cargo. The circumstances compel the conclusion that the vessel was cruising about off our coast with the intent on the part of the master [fol. 65] that ultimately the cargo would be taken to the United States by other boats. The evidence indicates that the master of the Mazel Tov did not intend to approach nearer than four leagues to our coast. The point of land from which the Mazel Tov is here found to have been eleven and one-half miles distant is a small island, "No Man's Land", lying some distance at sea off the island of Martha's Vineyard.

The speed of the Mazel Tov, under normal conditions, was not in excess of ten knots. Her certificate of registration gives the speed as nine knots, which is not inconsistent with the size of the vessel and motors with which it is equipped. The master testified the boat could do between nine and ten knots. No evidence was presented by the Government which would suggest that these speeds were not substantially correct.

Upon request of the boarding officer, the Mazel Tov's papers were produced, consisting of her certificate of Brit-

ish registry, manifest, clearance papers and crew list. The manifest, which was written in French, shows the port of departure to have been St. Pierre and gives the destination of the vessel as "Nassau et al haute mer." The cargo and consignee appear as follows:

"1 lot de diverses merchandises lest et provisions de bord.

Saint Pierre le 16 Octobre 1930.

Le Capitaine, F. D. Cook."

Following the inspection by the boarding crew, the Mazel Tov was taken in tow by the coast guard at a point thirteen miles from land, having drifted a considerable distance during the period of inspection. She was brought to the port of Providence and there turned over to the customs officials, together with her cargo. The cargo was appraised by the customs officials and the following notification to the master given:

[fol. 66] "November 18, 1930.

Frank Cook, master of British motorship Mazel Tov, c/o Joseph E. Fitzpatrick, attorney, 317 Hospital Trust Bldg., Providence, R. I.

SIR: You are hereby notified that the above-named vessel has become liable to penalties for violations of Acts of Congress as follows:

Tariff Act of 1930, Sec. 584, Falsity of Manifest, $14,286.18.

Tariff Act of 1930, Sec. 584, Lack of Manifest, $500.

Tariff Act of 1930, Sec. 585, Attempting to Depart Before Report or Entry, $5,000.

These violations occurred November 1, 1930, at, to wit, 6.05 p. m. in latitude 41° 68′* 45″ N and longitude 70° 36′ 30″ W, within a collection district of the United States, said vessel having thereafter been arrested by Customs and Coast Guard officers and brought to the Port of Providence.

Respectfully, Emery J. San Souci, Collector."

No other action was taken by the Government prior to filing this libel.

---

*Error in notice.

At the outset there is one question which underlies all three causes stated in the libel. The Mazel Tov, loaded with liquor ultimately intended for transshipment to the United States, was seized at a point less than four leagues from our coast, but at a greater distance than she could have traversed in one hour. Was this seizure lawful? The answer to this question is dependent upon the relation to, and effect upon, the search and seizure provisions of the Tariff Act, of the treaty entered into between the United States and Great Britain, proclaimed May 22, 1924. (43 Stat. 1761.)

The preamble of the treaty recites that the two nations [fol. 67] "being desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages, have decided to conclude a Convention", etc. The preamble also recites that the purpose of the convention is "to aid in the prevention of the smuggling of intoxicating liquors into the United States".

Article I asserts the intention of the parties "to uphold the principle that three marine miles * * * constitute the proper limits of territorial waters". Paragraph (1) of Article II provides for boarding and examining vessels of British registry. Paragraph (3) of Article II provides: "The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense." The remaining provisions of the treaty are not here necessary to be stated.

It was clearly indicated by the court in the case of Ford et al. v. United States, 273 U. S. 593, in an opinion written by Mr. Chief Justice Taft that this treaty had relation to all the laws in effect in the United States having to do with prohibiting and forestalling the importation of intoxicating liquor. In that case the court said at page 618:

"The parties were dealing with a situation well understood by both. In effect they wished to enable the United States better to police its seaboard by enabling it, *within an hour's sail* from its coast, beyond its territorial jurisdiction and on the high seas, to seize British actual or would-be smugglers of liquor and, if they were caught, to proceed

criminally against them as if seized within the three-mile limit for the same offenses, in reference to liquor importation. No particular laws by title or date were referred to in the treaty but only the purpose and effect of them."

[fol. 68] The court referred specifically to both the National Prohibition and Tariff legislation and on page 619 says:

"Any law, the enforcement of and punishment under which will specifically prevent smuggling of liquor, should be regarded as embraced by the treaty."

There appears to be entertained three distinct interpretations of the effect of this treaty.

First. That the treaty extends the right of search and seizure so that a vessel with a speed greater than twelve knots can be seized within the distance of one hour's sail even though that be more than four leagues from our coast. Those entertaining this view, when confronted with the query upon what legislative authority can a vessel be seized beyond four leagues from our coast, which is the maximum distance fixed in any provision of the Tariff Act (there being no right of pursuit involved), resort to the doctrine that "the treaties are self-executing and extend the laws of the United States."* They entirely ignore the fact that the treaty purports to forbid nothing but only indicates that "His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels", etc. and that, if certain conditions exist, "the vessel may be seized and taken into a port of the United States, * * * for adjudication in accordance with such laws", clearly referring to acts of Congress.

Second. Others seem to recognize that there is nothing in the treaty which extends the application of any act of

---

*This notion may have been introduced by some courts because of the currency which has been given to an excerpt from a communication by Secretary Hughes, March 3, 1924, addressed to the House Committee on Foreign Affairs, in which he said: "The proposed treaty is, in a strict sense, self-executing, requiring no legislation on the part of Congress to make it effective."

Congress but are unwilling to accept the conclusion that the effect of the treaty may in many instances, where the vessel involved could not traverse in one hour a distance of four [fol. 69] leagues, result in limiting the exercise of the right of search and seizure asserted by Congress. As was said by the court in the case of The Vinces, 20 Fed. (2d) 164, at page 174:

"It is inconceivable that the parties could have intended to abrogate any such rights already existing without an explicit statement to that effect. I am clearly of opinion that the British treaty is not exclusive, and did not abrogate the statute of the United States providing for search and seizure within the twelve-mile limit."

Those entertaining this view appear to assume that prior to the negotiation of the treaty there was an unquestioned right to search and seize within the limits fixed by the statute. Perhaps that was so from the point of view of domestic law. It clearly was not so from the point of view of our international relations with Great Britain and many other countries. The purpose of the treaty was to avoid and to set at rest any international complications arising from an assertion of extraterritorial jurisdiction by Congress which was not recognized by other nations. Both the United States and Great Britain had long been the champions of limiting general territorial jurisdiction to the three-mile limit and had left all assertions of authority beyond that limit, in instances where protecting or police measures were necessary, to be dealt with as specific problems rather more administrative than jurisdictional in character.

The third view as to the effect of this treaty, and the one which I believe is supported by the majority of present authorities and by the soundest reasoning, is that it dealt completely with the subject of the limits within which search and seizure of British vessels could be made in the enforcement and application of our laws for the prevention of the importation or smuggling of liquor, and that the treaty excludes all extra-territorial seizures (that is be- [fol. 70] yond the three-mile limit), not made in conformity with the terms of the treaty. That such was the intention of the parties is apparent from the statement made by Sec-

retary Hughes, who negotiated the treaty with the British Government, in his note of July 19, 1923, to the British Embassy wherein he said:

"It may confidently be asserted that there would be no disposition on the part of the American authorities, and the special agreement would not justify any attempt, to seize a British vessel, save within the limits proposed, and when it was clear that the vessel concerned was directly involved in an attempt to introduce its illicit cargo into the territory of the United States."—MS. records, Department of State.

It is a matter of common knowledge that prior to entering into the treaty agreement the British Government had on several occasions protested against the seizure of boats of British registry outside the three-mile limit which carried cargoes of liquor. This situation existed at the time the treaty was negotiated and the convention entered into. The treaty says:

"The rights conferred by this article shall not be exercised at a greater distance from the coast of the United tates * * * than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense."

Can it be seriously urged that after entering into this treaty there remained in all cases the same maximum authority which had before been asserted and which was the cause of the differences to be settled?

In one of the early cases dealing with this question, the Frances Louise, 1 Fed. (2d) 1004, Morton, J., upon this point, said at page 1005:

"I have great doubt whether any such broad right of [fol. 71] seizure exists as the government contends. But it is not necessary to decide this question, because I am clearly of opinion that the whole situation is covered by the treaty. The circumstances surrounding the execution of that treaty are matters of general knowledge. Vessels of British registry were lying off our coasts, delivering liquor to small boats, which smuggled it ashore. Seizures of such vessels were made by our officials, which were regarded by the British government as unjustified by international law, and led to representations by the British government to

this country. On the other hand, British ships found themselves much embarrassed by the decision of the Supreme Court in Cunard S. S. Co. v. Mellon, 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306, concerning supplies of liquor which they customarily carried for use on board. Under these circumstances the treaty was negotiated. It dealt explicitly with the case of liquor ships hovering on our coast and being visited by small boats from shore. Of course, such small boats only come to the hovering vessel to get contraband goods. Both parties understood that. The plain inference is that such trading does not render the hovering vessel amenable to seizure as long as she keeps to the high seas, except as provided in the treaty. I think both nations intended the treaty to deal with the matter in a complete way. If so, upon familiar principles of law, it is conclusive."

In the case of The Sagatind, 4 Fed. (2d) 928 at page 930, Hand, J., says, in referring to a similar treaty entered into between the United States and Norway:

"The foregoing treaty extends any limitation which might exist upon the jurisdiction of the court to proceed against offending vessels which may be subject to forfeiture for violations of our laws 'prohibiting the impor- [fol. 72] tation of alcoholic beverages' to such cases as may come within the terms of the treaty, and, I think, also implies as an alternative rule of treaty-made law that vessels shall not be proceeded against for violation of such laws when seizure was made beyond the distance from our coast prescribed in the treaty. In other words, the treaty completely deals with the extreme right of seizure upon which initial jurisdiction of the cause of forfeiture must depend."

This construction as to the effect of the treaty obviously amounts to a limitation upon, and no extension of, the statutes affected. No statute dealing with this question asserts a jurisdiction or imposes any penalty beyond the distance of four leagues. The application of the treaty, therefore, in respect to all vessels of less than twelve knots results in a qualification or limitation of the statute involved by narrowing the zone over which it may be ap-

plied to that distance only which the vessel can traverse in one hour. It is, of course, an elementary principle that a treaty may have that effect upon an existing act of Congress. The rule as generally stated is that wherever there be an inconsistency between an Act of Congress and a treaty, the one most recent in point of time must control.

Ribas y Hijo v. United States, 194 U. S. 315.
Rainey v. United States, 232 U. S. 310.

The only difficulty in applying this long-established doctrine in the present case, to the end of construing the treaty as a limitation upon the Act of Congress, is that the treaty was negotiated in 1924 and the present action is brought under the Tariff Act of 1930. An examination, however, of the Tariff Act of 1930 discloses that the enforcement provisions thereof are substantially verbatim reenactments of like sections in the Tariff of 1922. It cannot be assumed, therefore, that Congress had any intention [fol. 73] of altering the status and effect of these treaties when it reenacted in 1930 the enforcement provisions prevailing when the British and other treaties were entered into.

The conclusions here reached, in respect to the effect of the British treaty, compel the dismissal of the libel and discharge of the vessel. In the hope, however, that the case may be reviewed on appeal, I shall deal with the other and subordinate issues raised which in general affect separate causes stated in the libel. This will insure a final disposition of the case through having its full consideration before the court for review.

The next issue to be considered is: what are the limits of a collection district? This issue arises under the third cause stated in the libel, which alleges that the Mazel Tov arrived from a foreign port within the limits of collection district number 4 and attempted to depart without making entry in violation of Section 585.

It is contended on behalf of the Government that the limits of the collection district extend four leagues from the shore. If this contention be sound the Mazel Tov was, at the time she was boarded, one-half mile within the limits of collection district number 4. If, however, as had been found, it was not the intention of her master to go within four leagues of the coast of the United States and that

his doing so was an inadvertent approach too close to the small island mentioned, there may be grave doubt as to whether the boat, though within the twelve-mile limit, had "arrived" within the meaning of the term as used in Section 585, and in this connection it will be recalled that the Mazel Tov when boarded had not been at anchor but was under way. Passing, however, the matter of the proper construction of the term "arrived" within the meaning of the Act, I am satisfied that the Mazel Tov was not within the limits of the collection district as alleged.

The present organization of the customs service was [fol. 74] fixed by executive act of the President pursuant to legislative authority as outlined in the President's message to Congress under date of March 3, 1913, with only minor changes which, by similar action, have subsequently been made. Collection district number 4, as then and now designated, is as follows:

"No. 4, Massachusetts. Ports of entry: Boston (including Cambridge, Chelsea, Medford, Everett, Quincy, and Somerville), Fall River, Gloucester, New Bedford, Plymouth, Provincetown, Salem (including Beverly, Marblehead, and Lynn), Springfield, Vineyard Haven, Worcester."

An examination of the legislation and executive action discloses a division of the territorial United States into some forty-nine customs collection districts, together with their ports of entry and district headquarters. These districts are variously designated, some by states, some inclusive of two states and some such as district number 12, port of entry: "Pittsburgh."

Nowhere in the legislation or executive acts organizing the customs service is there any suggestion of including within a district any area beyond the territorial limits of the state or other municipal designations. The State of Massachusetts is a very definite area, consisting of the land within its borders and littoral waters extending out three miles.

Dunham v. Lamphere (Mass.), 3 Gray, 268.

Although the term "collection district" has for many years been used in our customs legislation, there are few cases which directly involve the definition of the term.

They are all so recent as to be yet unreported at this writing.

Miller (Metmuzel) v. United States, Fourth Circuit, decided April 13, 1931.

United States v. The Frances T, Second Circuit.

United States v. The Deauville, Southern District of Alabama, decided April 29, 1931.

[fol. 75] All of these cases would be cited in support of the contention that the limits of a collection district extend beyond our territorial waters to four leagues from the coast.

In the case of the Frances T, the question of whether the vessel had arrived within the limits of a collection district was involved; the Circuit Court of Appeals, Second Circuit, affirming, without opinion, the holding of Coxe, J., that the vessel had entered collection district number 11. The vessel was seized about ten miles off-shore. An examination of the record of the case discloses, however, that there was evidence, and upon appeal the Government so contended, that the Frances T had been within the three-mile limit and made shore contact. There is nothing in the records of the District Court and/or Circuit Court to indicate whether these courts did or did not find that the vessel had been in territorial waters.

In the case of the Deauville the court, in holding that the limits of a collection district extend beyond territorial waters, rested the decision solely upon the authority of the Metmuzel case, supra. Judge Ervin's full discussion of the question is as follows:

"It is urged that being over three miles from shore, and nearly twelve miles, she was not within a collection district. This contention is met in Miller v. United States, Fourth Circuit, decided April 13, 1931, and not yet reported."

The only considered opinions, therefore, to be found upon the question are those in the Metmuzel case, that of Groner, J., for the Eastern District of Virginia, and that of Parker, C. J., affirming the lower court.

While I am reluctant, sitting as a court of first instance, to decline to follow the holding of a Circuit Court of Appeals, even of another Circuit, I cannot in this case do so and believe that the error of the conclusions reached upon

this question in the case of the Metmuzel can be demonstrated.

[fol. 76] At the outset, in his consideration of the question in the Metmuzel, Parker, J., says:

"Appellant contends that the collection district thus defined is limited to the territorial boundaries of the United States, which extend only to the three-mile limit at sea. We think, however, that this ignores the jurisdiction asserted under the revenue statutes to the twelve-mile limit, and that the collection district as *contemplated by the statute in question* extends to that limit."

The court there appears to ignore the fact that nowhere in the statute in question is there the slightest indication that Congress purports, by implication or otherwise, to be defining or fixing collection districts. The collection district had already, by totally disassociated legislation and executive action, been fixed and established. There is nothing to suggest that the Tariff Act of 1930, or that of 1922, undertook to alter the limits of these districts. It must be assumed that when Congress used the term in Section 585 of the Tariff Act they were using it with the meaning and with the limits which had long since been established. It is pure sophistry to try to read into the term "collection district" a meaning drawn by inference from the Tariff Act. If in 1913 in fixing the collection districts Congress had expressly asserted extraterritorial limits for those districts along our coast, it would be the duty of the courts to respect that assertion and leave the international complication for other authority to settle. But Congress did not do so, and it is not for the courts, and in the absence of express language of Congress, to now enlarge upon the meaning of the term.

Parker, J., further says:

"* * * it seems clear that the district must be held to embrace the territory within which the customs officials are given jurisdiction and required to perform their duties. How far does this territory extend?"

[fol. 77] This observation by the court involves the assumption that Congress may not in exercising certain police prerogatives over extraterritorial waters, assign

duties to customs officials beyond the limits of their collection districts. There appears no good reason in law why such duties may not be charged upon custom officials as well as upon the coast guard. In fact, the very statute under consideration indicates that Congress had in mind charging customs officials with duties and prerogatives of exactly that character.

Section 581 of the Tariff Act, containing the general provisions authorizing the boarding of vessels, provides in part:

"Officers of the customs or of the Coast Guard, and agents or other persons authorized by the Secretary of the Treasury, or appointed for that purpose in writing by a collector may at any time go on board of any vessel or vehicle at any place in the United States or within four leagues of the coast of the United States, *without as well as within their respective districts, to examine.* * * *"

See Maul v. United States, 274 U. S. 501, and concurring opinion of Brandeis and Holmes, JJ., at page 512.

The practice of nations to exercise certain protective measures beyond their territorial limits, to better protect their territory, has long been recognized by international law and comity among nations. That such assertions of authority are, however, extraterritorial,* although accepted and approved within limitations, does not alter the [fol. 78] fact that they are predicated upon necessity and mutual international tolerance.

Le Louis, 2 Dodson Adm. Rep. 210, 245.

---

* "The Government of the United States has repeatedly asserted that the limits of territorial waters extend to three marine miles outward from the coastline * * * It is quite apparent that this Government is not in a position to maintain that its territorial waters extend beyond the three-mile limit and in order to avoid liability to other Governments, it is important that in the enforcement of the laws of the United States this limit should be appropriately recognized."—Secretary Hughes' address before the Council on Foreign Relations, New York, Jan. 23, 1924.

Nowhere is there legal warrant for courts to assert such a jurisdiction by implication. This is especially true of English and American courts.

At another part of his opinion Parker, J., says:

"If a ship bound for the United States may be required to produce a manifest of its cargo as soon as it comes within the twelve-mile limit or may be forfeited for transferring cargo within such limit without a permit, *there is no reason why forfeiture should not be enforced against a vessel bound for the United States which departs without making an entry as the statute requires.*"

The court in The Metmuzel begs the question by assuming requirements of the statute as to entry, and appears to overlook the fact that Congress in Section 581, authorizing boarding and search, specifically fixes the distance within four leagues of the coast of the United States, and in Section 586, forbidding unlading without permit, says: "after its arrival within four leagues", etc., but in Section 585, dealing with departure without entry, for its application fixes the distance "within the limits of any collection district". If it was intended that the latter should mean the same distance as is expressly provided in the other sections why was not the same simple statement "within four leagues" used?*

Having in mind the fact that we are here dealing with a statute penal in character, and the rule that extraterritorial jurisdiction should not be asserted by a Federal court in the absence of express congressional mandate, it [fol. 79] is my opinion that every sound principle of construction requires the definition of the "limits of any collection district" as being the limits of territorial waters, namely, one league from our coast.

The next issue to be considered is that raised by the first cause stated in the libel. It is alleged that the master became

---

*"Yet in fact we do not deal differently with a statute from our way of dealing with a contract. We do not inquire what the legislation meant; we ask only what the statute means" Harvard Law Review, Vol. 12, pages 417, 419. "The Theory of Legal Interpretation." Oliver Wendell Holmes.

subject to a penalty of $500 under Section 584 for failure at the point where the vessel was boarded to produce the manifest of the cargo. This section, entitled "Falsity or lack of manifest", provides in part as follows:

"Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer demanding the same shall be liable to a penalty of $500, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty equal to the value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle shall be subject to a penalty of $500; * * *"

In the present case the Government's own testimony discloses that upon request the ship's papers were promptly produced, including one purporting to be a manifest, the content of which has already been stated. The Government contends, however, that the master is liable for a penalty of [fol. 80] $500 for failure to "produce the manifest" on the ground that the manifest presented, being inadequate, amounted to no manifest at all.

The Government relies upon the case of The Irene C, 41 Fed. (2d) 288. In that case the vessel was bound for the United States and was less than four leagues, but more than one league, from our coast. In regard to her manifest the court said:

"As her manifest did not comply with the basic requirements of our law (19 U. S. C. A. Sec. 241), it is for present purposes a nullity. Phile v. The Anna, 1 Dall. 198, 1 L. Ed. 98."

The citation is in point, but with its conclusion I do not agree.

The Government's contention is based upon the fact that the manifest produced by the master of the Mazel Tov eleven and one-half miles from our coast did not conform to the requirements of Title IV, Section 431, of the Act. This section provides in part as follows:

"The master of every vessel *arriving in the United States and required to make entry* shall have on board his vessel a manifest *in a form* to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained."

To determine whether the requirements of Section 431 as to form and content of a manifest are to be read into Section 584, it becomes necessary to scrutinize the subdivisions of the statute and to consider the purpose and application of these subdivisions. Title IV of the statute entitled "Admin-trative Provisions" is in turn divided into Parts I, II, III, IV, V and VI. Each part is subdivided into numerous sections providing different and independent penalties where it is intended to penalize for their non-observance. Section [fol. 81] 431, wherein counsel for the Government finds the detailed requirements for the form of a manifest, is the first section of Part II, which is entitled, "Report, Entry, and Unlading of Vessels and Vehicles". I am convinced from a reading of the several sections of Part II that they apply only to vessels which have arrived in our territorial waters and in general come into intended application only when the vessel has arrived in port.

It is not until we come to Part V, wherein we find the several sections brought under consideration by the present libel, that we come to that portion of the Act embodying the special enforcement provisions and which includes among its several sections those which assert and authorize the special extraterritorial jurisdiction which has already been discussed.

Indicative of what I may term the intended "port application" of the provisions of Part II is the very nature of the things required to be done. For example, Section 431, fixing the form of the manifest, makes it applicable to the master of every vessel arriving in the United States and required to make entry. Section 439, closely following in Part II, provides:

"Immediately upon arrival and before entering his vessel, the master of a vessel from a foreign port or place required to make entry shall mail or deliver to the comptroller of customs for the district in which the port of entry is located, a copy of the manifest. * * *"

Surely no common sense interpretation of the meaning of the terms "arrival" and "arrived" as used in Part II, when considered in conjunction with things required to be done, could construe them as meaning the crossing of an extraterritorial line twelve miles at sea.

The purpose of the requirements and penalties of Section 584, Part V, is to facilitate a protective and general examination of the vessel and cargo at any point within [fol. 82] four leagues from our coast. It represents a part of the extraterritorial authority asserted. The section does not purport to impose a domestic control over the detail or form of the ship's papers other than that the cargo must be described, which is obviously necessary to the purpose to be served. It would, indeed, be a marked alteration of the American and English stand, in respect to extraterritorial jurisdiction, if in such a zone a vessel of foreign registry, or its master, should become subject to special penalties because the form of the manifest, beyond the necessary description of the cargo, did not conform to a regulation of a department of government as is contemplated in Section 431. Congress in the Tariff Act has wisely made no such assertion of absolute domestic regulation in detail until the vessel has "arrived" in the United States.

The case of Phile v. The Anna, 1 Dall. 197, cited by the court in The Irene C supra, is not in conflict with this interpretation. In the case of the Anna, whose inadequate manifest was involved, was not in extraterritorial waters but was in the port of Philadelphia.

My interpretation of the law is that the master of a vessel from a foreign port, if within four leagues of our coast, may be required to produce his ship's papers, specifically the manifest, which he carries. If he cannot, or does not, he becomes subject to a penalty of $500. If he produces a manifest, he has, in that regard, complied with the requirements of Section 584. If the manifest produced does not reasonably describe the cargo carried, there are drastic penalties to cover that situation.

As the remaining objections which were interposed to the libel are of specific, rather than of general, application or interest, they will not here be reviewed. I find that there was no irregularity or unfairness in the appraisal of the cargo. The form of the notice to the master, advising him that the vessel had become liable to the several penalties set [fol. 83] forth, was sufficient because of the authority under Section 594 to enforce the collection of penalties by summary proceedings against the vessel.

The Irene C, 41 Fed. (2d) 288, supra.
The Pesaquid, 11 Fed. (2d) 308.

A better practice would be, however, to notify the master, personally and directly, that he has become liable to, and that there have been assessed against him, the specific penalties for specified violations.

In arriving at the conclusions expressed in respect to the major issues involved in this case, I am alert to the importance and necessity of curbing the smuggling and importation of liquors in violation of our laws. I am convinced, however, that a vigorous adherence to sound legal principles of interpretation, leaving it to Congress to remedy any deficiencies in the law, is the only course which will stand the test of time.

A decree, dismissing the libel and discharging the vessel, may be submitted for approval and entry.

IN UNITED STATES DISTRICT COURT

FINAL DECREE IN ADMIRALTY 1646—Entered and Filed May 22, 1931

At a stated term of the District Court of the United States for the District of Rhode Island, held in the city of Providence on the fourth day of December, A. D. 1930.

Present: The Honorable Ira Lloyd Letts, District Judge.

The above-entitled cause came on to be heard upon the original libel of the United States of America, libellant, seeking to effect collection of certain penalties claimed to have been assessed against the master of the British Motor

Screw Mazel Tov for alleged violations of the Tariff Act of 1930 and upon the pleadings and proof and after argument of the proctors for the respective parties hereto and due deliberation being had thereon, it is ordered, adjudged and decreed that the prayer of the libellant to effect the collection of the aforementioned penalties against the British Motor Screw Mazel Tov is hereby dismissed, and the afore-[fol. 84] mentioned vessel ordered discharged from arrest and returned to the custody of its owners or their agent.

Entered as the decree of this court this twenty-second day of May, A. D. 1931. By Order.

Alice Peckham, Clerk.

Enter.

Ira Lloyd Letts, United States District Judge.

In United States District Court

Notice and Petition on Appeal in Admiralty 1646—Allowed and Filed May 25, 1931

The above-named libellant, United States of America, being aggrieved by the decree made and entered on the twenty-second day of May, A. D. 1931, in the above-entitled cause in respect to the dismissal of the prayer of the libellant to effect the collection of certain penalties against the British Motor Screw Mazel Tov and ordering the aforementioned vessel discharged from arrest and returned to the custody of the owners or their agent, hereby appeals from said decree to the United States Circuit Court of Appeals for the First Circuit for the reasons specified in the assignment of errors to be filed herein and prays that this appeal may be allowed, and prays for such other and further relief as may be just in the premises.

United States of America, by Its Proctor, Henry M. Boss, Jr., United States Attorney.

Dated May 25, 1931.

The foregoing claim of appeal is allowed.

Ira Lloyd Letts, United States District Judge.

[fol. 85] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS IN ADMIRALTY 1646—Allowed and Filed May 25, 1931

The above-named libellant, United States of America, files the following assignment of errors upon which it will rely upon the prosecution of the appeal in the above-entitled cause from a decree made and entered herein by this court on the twenty-second day of May, 1931:

1. The court erred in excluding certain testimony offered in behalf of the libellant.

2. The court erred in admitting in evidence certain testimony offered in behalf of the claimant.

3. The court erred in its findings of facts.

4. The court erred in its findings of law.

5. The court erred in dismissing the libel.

6. The court erred in dismissing the prayer of the libellant to effect the collection of penalties against the Mazel Tov.

7. The court erred in ordering the vessel discharged from arrest and returned to the custody of its owners or their agent.

Wherefore plaintiff prays that the decree of the District Court of the United States for the District of Rhode Island be reversed and that the said District Court be directed to enter decree for the libellant.

United States of America, by Its Proctor, Henry M. Boss, Jr., United States Attorney.

IN UNITED STATES DISTRICT COURT

FINAL DECREE IN ADMIRALTY 1647—Entered and Filed May 26, 1931

A libel having been filed in the above-entitled cause on the twenty-fourth day of November, A. D. 1930, seeking the

forfeiture of the cargo on the British Motor Screw Mazel Tov for alleged violation of Section 584, Title IV of the [fol. 86] Tariff Act of 1930, and coincident with this libel was filed one seeking penalties against the British Motor Screw Mazel Tov for the same violation which was fully heard before the Honorable Ira Lloyd Letts, District Judge, and a decree entered the twenty-second day of May, A. D. 1931 ordering the return of said vessel to its owners or their agent, it is hereby

Ordered, adjudged and decreed that the libel in the above-entitled cause to effect the forfeiture of 403 sacks and six bottles more or less of distilled spirits ex British Motor Screw Hazel Tov is hereby dismissed and the cargo ordered discharged and placed upon said British Motor Screw Mazel Tov in the custody of its owners or their agent.

Entered as the decree of this court this twenty-sixth day of May, A. D. 1931. By Order,

Alice Peckham, Clerk.

Enter..

Ira Lloyd Letts, United States District Judge.

In United States District Court

Notice and Petition on Appeal in Admiralty 1647—Entered and Filed May 25, 1931

The above-named libellant, United States of America, being aggrieved by the decree made and entered on the twenty-sixth day of May, A. D. 1931 in the above-entitled cause in respect to the dismissal of the libel of the United States of America, to effect the forfeiture of 403 sacks and six bottles, more or less, of distilled spirits ex British Motor Screw Mazel Tov, and ordering the aforementioned cargo discharged and placed upon said British Motor Screw Mazel Tov in the custody of its owners or their agents, hereby appeals from said decree to the United States Circuit Court of Appeals for the First Circuit for the reasons specified in the assignment of errors to be filed herein and prays that this appeal may be allowed, and prays for such

[fol. 87] other and further relief as may be just in the premises.

United States of America, by Its Proctor, Henry M. Boss, Jr., United States Attorney.

Dated May 25, 1931.

The foregoing claim of appeal is allowed.

Ira Lloyd Letts, United States District Judge.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS IN ADMIRALTY 1647—Allowed and Filed May 25, 1931

The above-named libellant, United States of America, files the following assignment of errors upon which it will rely upon the prosecution of the appeal in the above-entitled cause from a decree made and entered herein by this court on the twenty-sixth day of May, 1931.

1. The court erred in excluding certain testimony ofiered in behalf of the libellant.

2. The court erred in admitting in evidence certain testimony offered in behalf of the claimant.

3. The court erred in its findings of facts.

4. The court erred in its findings of law.

5. The court erred in dismissing the libel.

6. The court erred in ordering the said cargo ex British Motor Screw Mazel Tov discharged and placed upon said British Motor Screw Mazel Tov in the custody of its owners or their agents.

Wherefore plaintiff prays that the decree of the District Court of the United States for the District of Rhode Island be reversed and that the said District Court be directed to enter decree for the libellant.

United States of America, by Its Proctor, Henry M. Boss, Jr., United States Attorney.

[fol. 88] IN UNITED STATES DISTRICT COURT

MOTION FOR EXTENSION OF TIME FOR FILING TRANSCRIPT OF RECORD ON APPEAL IN ADMIRALTY No. 1646—Filed June 19, 1931

Now comes the United States of America, libellant-appellant in the above-entitled cause, and moves that the time for filing the record in said cause be extended to the twenty-second day of July, A. D. 1931.

By Its Proctor, Henry M. Boss, Jr., E., United States Attorney.

Granted. I. L. Letts, J.

IN UNITED STATES DISTRICT COURT

MOTION FOR EXTENSION OF TIME FOR FILING TRANSCRIPT OF RECORD ON APPEAL IN ADMIRALTY No. 1647—Filed June 19, 1931

Now comes the United States of America, libellant-appellant in the above-entitled cause, and moves that the time for filing the record in said cause be extended to the twenty-second day of July, A. D. 1931.

By Its Proctor, Henry M. Boss, Jr., E., United States Attorney.

Granted. I. L. Letts, J.

IN UNITED STATES DISTRICT COURT

STIPULATION FOR CONSOLIDATION IN ADMIRALTY No. 1646—Filed June 29, 1931

It is hereby agreed that the case of United States of America, Libellant, v. British Motor Ship Mazel Tov, Admiralty No. 1646, and the case of United States of America v. 403 Sacks and 6 Bottles More or Less of Distilled Spirits ex

British Motor Screw Mazel Tov, Admiralty No. 1647, are consolidated for purposes of appeal.

Henry M. Boss, Jr., United States Attorney, Proctor [fol. 89] for Libellant. Joseph E. Fitzpatrick, Proctor for Defendant.

Approved.

Ira Lloyd Letts, United States District Judge.

IN UNITED STATES DISTRICT COURT

STIPULATION FOR CONSOLIDATION IN ADMIRALTY NO. 1647—Filed June 29, 1931

It is hereby agreed that the case of United States of America, Libellant, v. British Motor Ship Mazel Tov, Admiralty No. 1646, and the case of United States of America v. 403 Sacks and 6 Bottles More or Less of Distilled Spirits ex British Motor Screw Mazel Tov, Admiralty No. 1647, are consolidated for purposes of appeal.

Henry M. Boss, Jr., United States Attorney, Proctor for Libellant. Joseph E. Fitzpatrick, Proctor for Defendant.

Approved.

Ira Lloyd Letts, United States District Judge.

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT IN ADMIRALTY NO. 1646—Filed June 30, 1931

1. The court finds that at the time the British Motor Screw Mazel Tov was directed or signalled to stop by the United States coast guard she was at a point eleven and one-half miles from the shores of the United States.

2. The court find that the British Motor Screw Mazel Tov had at no time been within three miles of the United States nor within the limits of the United States.

3. The court finds that the British Motor Screw Mazel Tov sailed from a foreign port and that it was intended that the

liquors aboard the said British Motor Screw Mazel Tov [fol. 90] should be trans-hipped to contact boats and landed in the United States.

4. The court finds that the speed of the British Motor Screw Mazel Tov was between nine and ten knots an hour and insufficient to propel her to the shores of the United States in one hour's sailing time.

5. The court find that the master of the British Motor Ship Mazel Tov produced a manifest to the coast guard officer who demanded it.

6. The court finds that there was found on board the British Motor Screw Mazel Tov merchandise which was not included or described in any manifest, which said merchandise consisted of 403 sacks and 6 bottles of foreign intoxicating liquors of the value of $14,286.18.

7. The court finds that, subsequent to the seizure of the British Motor Screw Mazel Tov, the notice and the form thereof advising the master that the vessel had become liable to penalties of $500, $5,000 and $14,286.18 were sufficient and that said penalties remain unpaid.

Ira Lloyd Letts, J.

IN UNITED STATES DISTRICT COURT

CONCLUSIONS OF LAW IN ADMIRALTY No. 1646—Filed June 30, 1931

1. The court holds that under the provisions of Section 584 of the Tariff Act of 1930 the master of the British Motor Screw Mazel Tov did not become liable to pay a penalty of $500 for not producing a manifest to the coast guard officer who demanded it and that the paper introduced by the claimant constituted a manifest within the meaning of Section 584 of the Tariff Act.

2. The court holds that under the provisions of Section 584 of the Tariff Act of 1930 the master of the British Motor Screw Mazel Tov did not become liable to a penalty of $14,286.18 for having on board said vessel merchandise not included or described in any manifest because the seizure was made beyond the three mile limit and not in conformity

[fol. 91] with the treaty entered into between the United States and Great Britain, proclaimed May 22, 1924. (43 Stat. 1761.)

3. The court holds that the master of the British Screw Mazel Tov did not become liable to a penalty of $5,000 for departing or attempting to depart from any collection district contrary to the provisions of Section 585 of the Tariff Act of 1930 because at the time the British Motor Screw Mazel Tov was directed or signalled to stop by the United States Coast Guard she had not arrived within the limits of any collection district as a collection district is limited to the territorial waters of the United States and extends out to sea for a distance of three miles from shore.

4. The court holds that, under the provisions of Section 594 of the Tariff Act of 1930, the British Motor Screw Mazel Tov has not become subject to the penalties of $500, $5,000 and $14,286.18 assessed against her master and that said vessel shall not be held for the payment of such penalties.

Ira Lloyd Letts, J.

IN UNITED STATES DISTRICT COURT

LIBELLANT'S EXCEPTIONS IN ADMIRALTY NO. 1646—Allowed and Filed June 30, 1931

Now comes the libellant, United States of America, in the above-entitled cause after decree entered dismissing the prayer of the libellant to establish certain penalties against the British Motor Screw Mazel Tov and excepts to the findings and rulings of the court made in said case as follows:

1. To the finding of the court that at the time the British Motor Screw Mazel Tov was directed or signaled to stop by the United States coast guard she was at a point eleven and one-half miles from the shores of the United States.

2. To the finding of the court that the speed of the British Motor Screw Mazel Tov was between nine and ten knots an hour and insufficient to propel her to the shores of the United States in one hour's sailing time.

3. To the finding of the court that the master of the Brit-
[fol. 92] ish Motor Ship Mazel Tov produced a manifest to the coast guard officer who demanded it.

4. To the ruling of the court that the master of the British Motor Screw Mazel Tov did not become liable to pay a penalty of $500 for not producing a manifest to the coast guard officer who demanded it and that the paper introduced by the claimant constituted a manifest within the meaning of Section 584 of the Tariff Act.

5. To the ruling of the court that the master of the British Motor Screw Mazel Tov did not become liable to a penalty of $14,286.18 for having on board merchandise not included or described in any manifest because the seizure was not made in conformity with the treaty with Great Britain.

6. To the ruling of the court that the master of the British Motor Screw Mazel Tov did not become liable to a penalty of $5,000 for departing or attempting to depart from any collection district, because a collection district is limited to the territorial waters of the United States and extends out to sea for a distance of three miles from shore.

7. To the ruling of the court that the British Motor Screw Mazel Tov had not become subject to penalties of $500, $5,000 and $14,286.18.

8. To the order of the court ordering entry of the final decree dismissing the prayer of the libellant to effect the collection of penalties against the British Motor Screw Mazel Tov.

United States of America, by Its Attorney, Henry M. Boss, Jr. E.

Allowed. I. L. Letts, J.

[fol. 93] IN UNITED STATES DISTRICT COURT

LIBELLANT'S BILL OF EXCEPTIONS IN ADMIRALTY No. 1646—Allowed and Filed June 30, 1931

1. The exception of the libellant to the finding of the court that at the time the British Motor Screw Mazel Tov

was directed or signaled to stop by the United States coast guard she was at a point eleven and one-half miles from the shores of the United States.

2. To the finding of the court that the speed of the British Motor Screw Mazel Tov was between nine and ten knots an hour and insufficient to propel her to the shore of the United States in one hour's sailing time.

3. The exception of the libellant to the finding of the court that a manifest was produced.

4. The exception of the libellant to the ruling of the court that the master did not become liable to pay a penalty of $500.

5. The exception of the libellant to the ruling of the court that the master did not become liable to pay a penalty of $14,286.18.

6. The exception of the libellant to the ruling of the court that the master did not become liable to pay a penalty of $5,000.

7. The exception of the libellant to the ruling of the court that the seizure was not made in conformity with the treaty with Great Britain.

8. The exception of the libellant to the ruling of the court that there was no jurisdiction in the court to forfeit the Mazel Tov if found within the twelve-mile limit when the speed of the vessel was insufficient to propel her to shore in one hour's sailing time.

9. The exception of the libellant to the ruling of the court that a collection district extends three miles to sea and not twelve miles to sea.

10. The exception of the libellant to the ruling of the [fol. 94] court that the Mazel Tov did not become subject to the penalties of $500, $5,000 and $14,286.18, assessed against her master.

11. The exception of the libellant to the order of the court ordering the entry of the final decree dismissing the prayer of the libellant to effect the collection of penalties against the British Motor Screw Mazel Tov.

And the said libellant says that all of said findings and rulings were erroneous and that said errors entitle it to the entry of decree for the libellant.

Wherefore it presents this its bill of exceptions and prays that the same may be allowed according to law.

United States of America, by Its Attorney, Henry M. Boss, Jr., E., United States Attorney.

Allowed. I. L. Letts, J.

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT IN ADMIRALTY No. 1647—June 30, 1931

1. The court finds that at the time the British Motor Screw Mazel Tov was directed or signalled to stop by the United States coast guard she was at a point eleven and one-half miles from the shores of the United States.

2. The court finds that the British Motor Screw Mazel Tov had at no time been within three miles of the United States nor within the limits of the United States.

3. The court finds that the British Motor Screw Mazel Tov sailed from a foreign port and that it was intended that the liquors aboard the said British Motor screw Mazel Tov should be transshipped to contact boats and landed in the United States.

4. The court finds that the speed of the British Motor Screw Mazel Tov was between nine and ten knots an hour [fol. 95] and insufficient to propel her to the shores of the United States in one hour's sailing time.

5. The court finds that the master of the British Motor Screw Mazel Tov produced a manifest to the coast guard officer who demanded it.

6. The court finds that there was found on board the British Motor Screw Mazel Tov merchandise which was not included or described in any manifest, which said merchandise consisted of 403 sacks and six bottles of foreign intoxicating liquors of the value of $14,286.18.

Ira Lloyd Letts, J.

IN UNITED STATES DISTRICT COURT

CONCLUSION OF LAW IN ADMIRALTY No. 1647—June 30, 1931

The court holds that under the provisions of Section 584 of the Tariff Act of 1930 the cargo of the British Motor Screw Mazel Tov consisting of 403 sacks and 6 bottles of foreign intoxicating liquors is not forfeited to the United States because the seizure was made beyond the three mile limit, and beyond the distance from shore that the vessel could traverse in one hour's sailing time and was not made in conformity with the treaty entered into between Great Britain and the United States, proclaimed May 22, 1924 (43 Stat. 1761).

Ira Lloyd Letts, J.

IN UNITED STATES DISTRICT COURT

LIBELLANT'S EXCEPTIONS IN ADMIRALTY No. 1647—Allowed and Filed June 30, 1931

Now comes the libellant, United States of America, in the above-entitled cause after decree entered dismissing the prayer of the libellant to effect the forfeiture of the cargo of the British Motor Screw Mazel Tov and excepts to the findings and rulings of the court made in said case as follows:

1. To the finding of the court that at the time the British Motor Screw Mazel Tov was directed or signalled to stop by [fol. 96] the United States Coast Guard she was at a point eleven and one-half miles from the shores of the United States.

2. To the findings of the court that the speed of the British Motor Screw Mazel Tov was between nine and ten knots an hour and insufficient to propel her to the shores of the United States in one hour's sailing time.

3. To the decision of the court that under the provisions of Section 584 of the Tariff Act of 1930 the cargo of the British Motor Screw Mazel Tov consisting of 403 sacks and 6 bottles of foreign intoxicating liquors is not forfeited to the United States because the seizure was made beyond the three mile limit, and beyond the distance from shore that

the vessel could traverse in one hour's time and was not made in conformity with the treaty entered into between Great Britain and the United States proclaimed May 22, 1924 (43 Stat. 1761).

4. To the order of the court ordering the dismissal of the libel for the forfeiture of 403 sacks and 6 bottles of distilled spir-ts ex British Motor Screw Mazel Tov.

United States of America, by Its Attorney, Henry M. Boss, Jr., E.

Allowed. Ira Lloyd Letts, J.

IN UNITED STATES DISTRICT COURT

LIBELLANT'S BILL OF EXCEPTIONS IN ADMIRALTY No. 1647—Allowed and Filed June 30, 1931.

1. The exception of the libellant to the finding of the court that at the time the British Motor Screw Mazel Tov was directed or signalled to stop by the United States Coast Guard she was at a point eleven and one-half miles from the shores of the United States.

2. To the finding of the court that the speed of the British Motor Screw Mazel Tov was between nine and ten knots an [fol. 97] hour and insufficient to propel her to the shores of the United States in one hour's sailing time.

3. To the decision of the court that under the provisions of Section 584 of the Tariff Act of 1930 the cargo of the British Motor Screw Mazel Tov consisting of 403 sacks and 6 bottles of foreign intoxicating liquors is not forfeited to the United States because the seizure was made beyond the three mile limit, and beyond the distance from shore that the vessel could traverse in one hour's sailing time and was not made in conformity with the treaty entered into between Great Britain and the United States, proclaimed May 22, 1924. (43 Stat. 1761.)

4. To the order or the court ordering the dismissal of the libel for the forfeiture of 403 sacks and 6 bottles of distilled spirits ex British Motor Screw Mazel Tov.

United States of America, by Its Attorney, Henry M. Boss, Jr., E.

Allowed. Ira Lloyd Letts, J.

IN UNITED STATES DISTRICT COURT

MOTION FOR EXTENSION OF TIME FOR FILING TRANSCRIPT OF RECORD ON APPEAL (ADMIRALTY NOS. 1646 AND 1647)—Entered and Filed July 9, 1931

Now comes the United States of America, libellant-appellant in the above-entitled cause, and moves that the time for filing the record in said cause be extended to the twenty-second day of August, A. D. 1931.

By Its Proctor, Henry M. Boss, Jr., United States Attorney.

Allowed.

Ira Lloyd Letts, United States District Judge.

[fols. 98 & 99] IN UNITED STATES DISTRICT COURT

MOTION FOR EXTENSION OF TIME FOR FILING TRANSCRIPT OF RECORD ON APPEAL (ADMIRALTY NOS. 1646 AND 1647)—Entered and Filed August 22, 1931

Time for filing transcript of record on appeal is extended to August 29, 1931.

Enter.

Ira Lloyd Letts, United States District Judge.

Citations, in usual form, showing service on Joseph E. Fitzpatrick, omitted in printing.

[fol. 100] IN UNITED STATES DISTRICT COURT

PRÆCIPE IN ADMIRALTY NO. 1646—Filed July 29, 1931

To Alice Peckham, Clerk:

You are requested to prepare a transcript of record to be filed in the Circuit Court of Appeals for the First Circuit, pursuant to a notice and petition on appeal allowed

in the above-entitled cause, and to include in such transcript of record the following papers, to wit:

1. The libel.
2. The warrant and monition.
3. The answer and exceptions in admiralty.

[fol. 101] 4. The order of consolidation for hearing with Admiralty No. 1647 (oral).

5. The transcript of testimony.
6. The opinion.
7. The findings of fact.
8. The conclusions of law.
9. The decree dismissing libel.
10. Notice and petition on appeal.
11. Assignment of errors.
12. Citation on appeal.
13. Libellant's exceptions.
14. Libellant's bill of exceptions.
15. Motion for extension of time for filing transcript.
16. Motion for extension of time for filing transcript.
17. Stipulation of consolidation.
18. Præcipe.

Henry M. Boss, Jr., United States Attorney.

In United States District Court

Præcipe in Admiralty No. 1647—Filed July 29, 1931

To Alice Peckham, Clerk:

You are requested to prepare a transcript of record to be filed in the Circuit Court of Appeals for the First Circuit, pursuant to a notice and petition on appeal allowed in the above-entitled cause, and to include in such transcript of record the following papers, to wit:

1. The libel.
2. The warrant and monition.
3. The answer and exceptions in admiralty.
4. The order of consolidation with Admiralty No. 1646 (oral).
5. Findings of fact.
6. Conclusions of law.

7. Decree dismissing libel.
[fol. 102] 8. Notice and petition on appeal.
9. Assignment of errors.
10. Citation on appeal.
11. Libellant's exceptions.
12. Libellant's bill of exceptions.
13. Motion for extension of time.
14. Stipulation of consolidation.

Henry M. Boss, Jr., United States Attorney.

Clerk's certificate to foregoing transcript omitted in printing.

[fols. 103 & 104] Minute entry of argument and submission, January 8, 1932, omitted in printing.

[fol. 105] In United States Circuit Court of Appeals for the First Circuit, October Term, 1931

No. 2607

United States of America, Libellant, Appellant,

v.

Frank Cook, Claimant, Appellee

Appeal from the District Court of the United States for the District of Rhode Island

Before Bingham, Wilson, and Brewster, JJ.

Opinion of the Court—Filed March 18, 1932

Bingham, J.:

For the purpose of this appeal two causes tried in the federal District Court of Rhode Island were consolidated. The first is a libel brought by the United States against the British Motor Vessel Mazel Tov, to effect the collection of certain penalties assessed against the master for vio-

lations of the Revenue laws of the United States. Their assessment and collection are based on the following grounds: (1) for failure to produce a manifest of the cargo; (2) for having on board merchandise not described in the manifest; and (3) for having arrived within the limits of Collection District No. 4 (Massachusetts) and attempting to depart therefrom without making entry. The first two grounds are alleged to be violations of Section 584 of the Tariff Act of 1930, and the third a violation of Section 585 of that Act.

The second is a libel seeking the forfeiture of the cargo [fol. 106] (403 sacks and six bottles of distilled spirits) valued at $14,286.18, on the ground that it was found on board a vessel bound for the United States, within four leagues of the shore, consigned to the master of the vessel, and was not included or described in the manifest, in violation of Section 584 of the Tariff Act.

The libel, seeking collection of penalties out of the vessel, was dismissed and the vessel ordered returned to its owners or their agent. The libel for the forfeiture of the cargo was also dismissed and the cargo ordered placed upon the vessel in the custody of its owners or their agent; and, decrees of dismissal having been entered in each case, appeals were taken to this court.

In the District Court it was found that, on the evening of November 1, 1930, at about five minutes after six, the Mazel Tov was boarded by officers of the Coast Guard on the destroyer Tucker when eleven and one half miles distant from the nearest point of land off the coast of Massachusetts. When the Mazel Tov was first seen she was under way and headed for Gay Head, the southwesterly point of Martha's Vineyard. Having apparently observed the approach of the Tucker, she changed her course to sea, but, on being overtaken, promptly stopped when signalled so to do. An officer of the Tucker upon boarding the Mazel Tov demanded her manifest, which the court below found was produced. A search of the vessel, thereafter made, disclosed that her sole cargo, outside of sea stores, consisted of four hundred and three sacks and a few bottles of whiskey, cleared at St. Pierre on October 16, 1930, which were not included or described in her manifest; and, while the cargo was about one-fourth the quantity which the vessel could carry, it was specifically found

that the Tov had, at no time, been within three miles of the United States nor within the limits of the United States; that she sailed from a foreign port and that it was intended that the liquors on board her should be transhipped to contact boats and landed in the United States; that the speed of the Mazel Tov was between nine and ten knots an hour and insufficient for her to reach the shore of the United States in an hour's time; that the value of the [fol. 107] liquor was $14,286.18; and that the notice of the penalties, assessed by the administrative officer of the customs, and the form thereof, notifying the master of their assessment, in the sums of $500, $5,000 and $14,236.19, were sufficient, and that the assessments had not been paid.

The penalty of $500 assessed against the master for not producing a manifest was denied, on the ground that the paper produced on the demand of the Coast Guard officer was a manifest within the meaning of Section 584.

The penalty of $14,286.18, for having on board the vessel merchandise not included or described in the manifest, was denied on the ground that the seizure was made beyond the three-mile limit and not within an hour's run of the vessel to the nearest shore, as prescribed in the treaty between the United States and Great Britain of May 22, 1924 (43 Stat. 1761). In other words, that in so far as the provisions of Section 581 of the Tariff or Customs Act of 1922, reenacted in 1930, fixed the distance (four leagues or twelve miles) from the shore within which a vessel bound for the United States may be boarded and, if found to be violating the revenue laws of the United States, may be seized, they had been abrogated as to intoxicating liquors.

As to the penalty of $5,000, for departing or attempting to depart from a "collection district" in violation of the provisions of Section 585, it was held that the vessel was not liable for the reason that, at the time the Mazol Tov was signaled to stop, she had not arrived within the limits of any collection district; that a collection district does not extend out to sea for a greater distance than three miles from shore.

The only errors assigned and here relied on, as to the libel asserting penalties against the vessel, are: (1) whether the treaty of May 22, 1924, changed or amended the four league limit fixed in the various provisions of our

revenue laws and, in particular, as fixed in Section 581 of the Tariff Act of 1922, or has or was intended to have any application to the situations provided for and governed by those provisions; and (2) if the treaty did not amend Section 581 in the particular above specified, whether, under [fol. 108] the evidence and facts found, the vessel, when she came within four leagues or twelve miles of the shore, was bound for the United States so that the provisions of Sections 581 and 584 became applicable and subjected her to seizure and to the collection of the penalties assessed against her master.

The only penalties, as to which any contention is made before us on this appeal, are those for $14,286.18, the value of the merchandise, and for $5,000 for departing from a collection district without entry.

The first question is whether the treaty of May 22, 1924, amended that clause of Section 581 of the Tariff Act of 1922, fixing a coast line four leagues from our shore as the bound with respect to which any vessel coming within the same should, if requested, produce a manifest or be subject to the penalties prescribed in Section 584, which provisions Congress has made for the protection of our commerce and the enforcement of our customs-revenue laws.

As to this we are of the opinion that the District Court was in error; that the High Contracting Parties, in making the treaty of May 22, 1924, did not intend to alter and did not thereby effect a change in the customs-revenue laws of the United States, wherein Congress had fixed a four league protective zone. At the time the treaty was made the Eighteenth Amendment to the Constitution was in force and the National Prohibition Act was in existence, having been enacted by Congress in 1919. By both the Amendment and the National Prohibition Act the importation of intoxicating liquors into the United States and all territory subject to its jurisdiction was prohibited.

The Eighteenth Amendment (40 Stat. 1050), in Section 1, provided:

"Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of *intoxicating liquors* within, the *importation thereof* into, or the exportation thereof from *the United States and all terri-*

tory subject to the jurisdiction thereof for beverage purposes is hereby *prohibited.*"

[fol. 109] And Section 3, Title II of the National Prohibition Act (41 Stat. 305) provided:

"Sec. 3. *No person shall* on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, *import,* export, deliver, furnish or possess any *intoxicating liquor* except as authorized in this Act, and all provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

November 23, 1921, Congress passed an act supplemental to the National Prohibition Act (42 Stat. 222) and in Section 3 thereof defined the territorial field to which the Act applied, as follows:

"Sec. 3. That this Act and the National Prohibition Act shall apply not only to the United States but to all *territory* subject to its jurisdiction. * * *"

And the Supreme Court in Cunard S. S. Co. v. Mellon, 262 U. S. 100, 120-122, prior to making the treaty, had held that the term "importation" as employed both in the Eighteenth Amendment and in the National Prohibition Act had a broader meaning than in the customs-revenue laws; that under the former the bringing of intoxicating liquors for beverage purposes within the three mile limit, though without intending to land, was forbidden importation, although under the customs-revenue laws the bringing of such intoxicating liquors within the three mile limit without intending to land was not a forbidden importation. See also Alksne v. United States, 39 Fed. (2d) 62, 67, 68.

And in construing the meaning of the word "territory" (p. 122) as used in the Eighteenth Amendment, in the phrase "the United States and all *territory* subject to the jurisdiction thereof," the court had held that it meant "the regional areas—of land and adjacent waters—over which the United States claims and exercises dominion and control as a sovereign power"; that "the immediate context and purport of the entire section show that the term is used in a physical and not in a metaphorical sense,—that it refers to *areas* or *districts* having fixity of location and recog-

nized boundaries. See United States v. Bevans, 3 Wheat. [fol. 110] 336, 390"; and that the term "territory" as used in the supplemental act, above quoted, means "that its field coincides with that of the Eighteenth Amendment" (page 127).

In explaining the extent or boundaries of the regional areas of land and water over which the United States claims and exercises dominion and control as a sovereign power (page 122), it said:

"It now is settled in the United States and recognized elsewhere that the territory *subject to its jurisdiction* includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed arms of the sea along its coast and a *marginal belt of the sea extending from the coast line outward a marine league,* or three geographic miles."

Then again, in speaking of the applicability of the National Prohibition Act and the above quoted supplemental provision, with reference to domestic and foreign vessels when within or without the waters extending outward three miles from the coast line (p. 127), it said:

"There is in the act no provision making it applicable to domestic merchant ships when outside the waters of the United States, nor any provision making it inapplicable to merchant ships, either domestic or foreign, when within those waters, save in the Panama Canal."

And in concluding its discussion as to the territorial applicability of the Act (pp. 128, 129), it said:

"Examining the act as a whole, we think it shows very plainly, first, that it is intended to be operative throughout the *territorial limits* of the United States, with the single exception stated in the Canal Zone provision; secondly, that it is not intended to apply to domestic vessels when outside the *territorial waters* of the United States, and thirdly, that it is intended to apply to all merchant vessels, whether foreign or domestic, when within those waters, save as the Panama Canal Zone exception provides otherwise.

"In so saying we do not mean to imply that Congress is without power to regulate the conduct of domestic merchant ships when on the high seas, or to exert such control over

them when in foreign waters as may be affirmatively or tacitly permitted by the territorial sovereign; for it long [fol. 111] has been settled that Congress does have such power over them. Lord v. Steamship Co., 102 U. S. 541; The Abby Dodge, 223 U. S. 166, 176. But we do mean that the National Prohibition Act discloses that it is intended only to enforce the Eighteenth Amendment and limits its field of operation, like that of the Amendment, to the territorial limits of the United States."

A further question was involved in Cunard S. S. Co. v. Mellon. It there appears that foreign ships from an early day had exercised "the practice of carrying intoxicating liquors for beverage purposes as a part of a ship's sea stores," and the Steamship Company made the contention that neither the Amendment nor the Act itself could have been intended to disturb that practice within our territorial waters and ports. But the court held that "the avowed and obvious purpose of both the Amendment and the Act was to put an end to prior practices respecting such liquors, even though the practices had the sanction of antiquity, generality and statutory recognition."

This decision was rendered April 30, 1923. It brought to light an apparent lack of unchallenged power on the part of the United States to search and seize foreign vessels outside the three mile limit, in the enforcement of the Eighteenth Amendment and the National Prohibition Act in so far as they prohibited the importation of intoxicating liquor into its territorial waters—within one league of its coast.

It also made clear the inability of British vessels, if the Prohibition Act was to be enforced, to bring liquors that were sea stores within our territorial waters and ports.

With these difficulties confronting the two nations, they negotiated the treaty of May 22, 1924, in which, in Article I, they reaffirmed what had previously been the universal understanding (Cunard S. S. Co. v. Mellon, p. 122) that "3 marine miles extending from the coastline outwards and measured from low-water mark constitute the proper limits of territorial waters."

It is apparent that this provision of Article I did not settle the difficulties which brought the High Contracting Parties together. But in Article II provisions were inserted authorizing the United states to exercise powers, without ob-

[fol. 112] jection, which theretofore the British government had questioned.

In subdivision 1 of that Article "His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag *outside the limits of territorial waters* by the authorities of the United States, * * * in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are *endeavoring to import* or *have imported alcoholic beverages* into the United States, * * * in violations of the laws there in force, etc."

The more important clause, as concerned the United States, is found in subdivision 2 of that Article, which provides:

"If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, * * * *prohibiting the importation of alcoholic beverages*, the vessel may be seized and taken into a port of the United States, * * * for adjudication in accordance with such laws."

The only substantial limitation on the exercise of the right of visitation, search and seizure, given or recognized in these subdivisions of Article II, is contained in subdivision 3, which provides that they "shall not be exercised at a greater distance from the coast of the United States * * * than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense," or where "the liquor is intended to be conveyed to the United States * * * by a vessel other than the one boarded and searched, it shall be the speed of such other vessel, and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised."

It is apparent from the situation confronting the contracting parties and from these provisions of Article II that the United States was contracting for and obtaining the privilege or right, without objection on the part of the British government, of boarding and examining British vessels outside the three mile limit for the purpose of ascertaining [fol. 113] whether such vessels or those on board had imported, were importing or were attempting to import alco-

holic beverages into the United States in violation of its laws prohibiting the importation of alcoholic liquors; and that, if it found reasonable cause to believe that the vessel or those on board had committed or were committing or attempting to commit an offense against such laws, it could seize the vessel and have the same adjudicated and forfeited in accordance with those laws.

There is nothing in Article II or its subdivisions showing that the United States was undertaking to acquire any right or privilege as to the enforcement of its customs-revenue laws as exemplified in Sections 581 and 584 of the Tariff Act of 1922, which are the same as the like numbered sections in the Tariff Act of 1930, and contain provisions such as have been a part of every tariff act passed by Congress beginning with the Act of 1790 (1 Stat. 145), which introduced the four league limit (s. 31, p. 164) of the British hovering statutes. See 9 George 2d, C. A. P. 35 (1736); Arch v. United States, 13 F. (2d) 382. Neither the Tariff Act of 1922 nor of 1930 prohibits the importation of alcoholic beverages. Sections 581 and 584 clearly do not prohibit their importation and consequently it cannot reasonably be said that the High Contracting Parties in Article II of the treaty were undertaking to or did there stipulate with reference to our customs-revenue laws, and particularly Sections 581 and 584 containing provisions which had been embraced in the customs-revenue statutes of this government since its foundation and which did not prohibit importation of alcoholic liquors. Gillam v. United States, 27 Fed. (2d) 296, 300, 301; Miller v. United States, 49 Fed. (2d) 368, 369; certiorari denied in 283 U. S. 866.

The fact that Congress in 1930 reenacted Sections 581 and 586 of the Tariff Act of 1922, without change, each of which sections contained the "four leagues of the coast" provision, is practically conclusive evidence that Congress did not regard or understand that these sections of the Act of 1922 were amended by the treaty.

Having reached the conclusion that the treaty of 1924 did not repeal or abrogate the clause fixing a four league zone in our customs-revenue laws (including Section 581), [fol. 114] the next question is, whether the Mazel Tov may be charged with the payment of the penalty of $14,286.18 assessed against the master for having on board merchandise not included or described in the vessel's manifest.

The Tariff Acts of 1922 and 1930, in Section 584, provide:

"Any master of any vessel * * * bound to the United States who does not produce the manifest to the officer demanding the same shall be liable to a penalty of $500, and if any merchandise, including sea stores, is found on board of or after having been unladen from said vessel * * * which is not included or described in said manifest or does not agree therewith, the master of such vessel * * * shall be liable to a penalty equal to the value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel * * * shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel * * * the master * * * shall be subject to a penalty of $500; etc."

And Section 594 of those Acts provides:

"Whenever a vessel * * *, or master * * * has become subject to a penalty for violation of the customs-revenue laws of the United States, such vessel * * * shall be held for the payment of such penalty and may be seized and proceeded against summarily by libel to recover the same; etc."

In the District Court, as above pointed out, the penalty in question was denied, not on the ground that the vessel was not subject to the penalty, in case the provisions of Sections 581 and 584 of the Act of 1922 were not amended by the treaty of 1924, but solely on the ground that they were so amended and Congress by reenacting these sections in the Act of 1930 did not intend to alter the treaty. We think that all the facts essential to the assessment of the penalty of $14,286.18 against the master under Section 584, and its collection out of the vessel under Section 594, have been found by the court below, unless it be the fact whether the vessel, when it came within four leagues of our shore, was bound for the United States. This matter the District Court either regarded as covered by his findings, or inadvertently overlooked. He specifically found [fol. 115] that the vessel sailed from Saint Pierre, a foreign port; that it was intended that the liquors on board her should be transhipped to contact boats and landed in

the United States; that when hailed and boarded she was less than four leagues from the nearest shore; and that the liquors were not included in her manifest. And the evidence further shows that, when the Mazel Tov was first seen she was 100 miles or so off her course to Nassau; that some fifteen days had expired since she left Saint Pierre; that she was then less than four leagues from shore, was under way headed for Gay Head, the southwesterly point of Marthas Vineyard, at night and without lights. Upon this showing we conclude that she was in fact and in law bound for the United States within Section 584 [The Marion Phillis, 36 Fed. (2d) 688 (2d Cir.); The Newton Bay, 36 Fed. (2d) 729, 731 (2d Cir.); Miller v. United States, 49 Fed. (2d) 368, 369 (4th Cir.)], and that the District Court erred in not holding that the seizure of the vessel was lawful and that she was subject to having the penalty assessed against the master collected out of her.

The conclusion of the District Court that the vessel could not be held for the payment of the penalty of $5,000 assessed against the master for the alleged violation of Section 585, we think, was right; for, on the facts found, the Mazel Tov did not enter or arrive within the limits of the Massachusetts Collection District or any other collection district of the United States. In the opinion of that court it is clearly pointed out that the collection district of Massachusetts only extends out three miles from the shore of that State, not to a point four leagues from shore.

A contrary view was taken by the Circuit Court of Appeals for the Fourth Circuit in Miller v. United States, 49 Fed. (2d) 368, and in support of its position it cited two cases—Harrison v. Vose, 9 How. 372, 380, and The Cherie, 13 Fed. (2d) 992. The latter case arose in this circuit. The provision of the Tariff Act which we there had under consideration was Section 586, not Section 585, which was the one involved in the Miller case, and is here. Section 586 authorizes the exercise of certain power or authority after the vessel's "arrival within four leagues of the coast of the United States." That provision is not contained in [fol. 116] Section 585. The exercise of the power authorized by Section 585 is when the vessel "arrives within the limits of any collection district and departs, or attempts to depart, etc." It is reasonable to suppose that Congress, in using the term "collection district" in 585, did not intend

that it should extend beyond the territorial jurisdiction of the United States, which the Supreme Court clearly points out in Cunard S. S. Co. v. Mellon, does not extend beyond three miles from the shore, and that in using the different terms in the two sections, they did so advisedly, and as meaning different areas. If the terms mean substantially the same, as contended by the government, it is strange that Congress did not use the same phrase in Sections 585, 586 and 581. However, our decision in The Cherie does not sustain the position taken by the Fourth Circuit as to this question; and we fail to see what bearing the other case cited (Harrison v. Vose) has to do with it. The court there did not have under consideration what the term "collection district" meant and manifestly did not hold that a collection district extended out four leagues from the shore.

The only remaining question relates to the forfeiture of the cargo on the ground that it was found on board the vessel bound for the United States, within four leagues of the shore, consigned to the master of the vessel and not included or described in the manifest as required by Section 584. The master, in his claim and answer to the libel, sets himself up as the consignee and claimant of the cargo of liquors, thereby admitting that the cargo was consigned to him. This fact and the other facts specifically found by the District Court fulfill all the requirements for an adjudication forfeiting the liquors under Section 584. Apparently the only reason for a contrary holding in the District Court as to this was that this section was amended by the treaty of 1924. There could have been no other reason for dismissing this libel and not ordering a forfeiture of the liquors.

The decrees of the District Court dismissing the libels are vacated and the cases are remanded to that court for further proceedings not inconsistent with this opinion.

[fol. 117] In United States Circuit Court of Appeals

Final Decree—March 18, 1932

This cause came on to be heard January 8, 1932, upon the transcript of record of the District Court of the United

States for the District of Rhode Island, and was argued by counsel:

Upon consideration whereof, It is now, to wit, March 18, 1932, here ordered, adjudged and decreed as follows: The decrees of the District Court dismissing the libels are vacated and the cases are remanded to that court for further proceedings not inconsistent with the opinion passed down this day.

By the Court.

Arthur I. Charron, Clerk.

Thereafter, to wit, on April 20, 1932, mandate was stayed until further order of court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 118] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,771. U. S. Circuit Court of Appeals, First Circuit. Term No. 82. Frank Cook, petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed May 16, 1932. File No. 36,771.